

EXHIBIT 5

In The Matter Of:
TAGNETICS, INC.

October 18, 2019

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UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION AT DAYTON

IN RE: * Case No. 19-30822
*
TAGNETICS, INC. *
*
* October 18, 2019
* * * * *

TRANSCRIPT OF HEARING
BEFORE THE HONORABLE GUY R. HUMPHREY
UNITED STATES BANKRUPTCY JUDGE

APPEARANCES:

STEPHEN B. STERN, ESQ.
ROBERT R. KRACHT, ESQ.
For Tagnetics, Inc.

KENNETH W. KAYSER
RONALD E. EARLEY
JONATHAN HAGER
Petitioning Creditors

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WITNESSES:

ON BEHALF OF TAGNETICS, INC.:

STERN, STEPHEN

Direct examination.....Page 18
Cross-examination.....Page 60
Redirect examination.....Page 86

ON BEHALF OF KENNETH KAYSER:

KAYSER, KENNETH

Direct testimony.....Page 93
Cross-examination.....Page 105

EARLEY, RONALD

Direct examination.....Page 129

ON BEHALF OF RONALD EARLEY:

EARLEY, RONALD

Direct testimony.....Page 132
Cross-examination.....Page 138
Redirect testimony.....Page 144

ON BEHALF OF JONATHAN HAGER:

HAGER, JONATHAN

Direct testimony.....Page 148
Cross-examination.....Page 156

TAGNETICS (19-30822) 10-18-19

3

1 (Proceedings begin at 9:34 a.m.)

2 THE CLERK: The United States Bankruptcy
3 Court for the Southern District of Ohio is now in
4 session until adjournment this 18th day of October
5 2019, the Honorable Guy R. Humphrey presiding. You may
6 be seated.

7 On the docket for this morning is Case Number
8 19-30822, Tagnetics, Incorporated. May the Court
9 please have appearances, beginning with counsel for
10 Tagnetics?

11 MR. STERN: Good morning, Your Honor.
12 Stephen Stern on behalf of Tagnetics.

13 THE COURT: Good morning, Mr. Stern.

14 MR. KRACHT: Your Honor, Robert Kracht, from
15 McCarthy Lebit, in Cleveland, Ohio counsel for
16 Tagnetics.

17 THE COURT: Good morning, Mr. Kracht.

18 MR. KRACHT: Thank you.

19 THE CLERK: Gentlemen, each stand and state
20 your full name for the record.

21 DR. KAYSER: My name is Kenneth Kayser.

22 THE COURT: Good morning, Mr. Kayser.

23 MR. EARLEY: Ronald Earley.

24 THE COURT: Good morning, Mr. Earley.

25 MR. HAGER: This is Jon Hager.

TAGNETICS (19-30822) 10-18-19

4

1 THE COURT: Good morning, Mr. Hager. Okay, I
2 think we're here for the hearing, evidentiary hearing,
3 on the motion to enforce settlement, filed by
4 Tagnetics, and the response of the Petitioning
5 Creditors, Mr. Kayser, Mr. Earley and Mr. Hager.

6 We reviewed everything extensively, I think,
7 from that perspective. We're ready to go, but I think
8 before we get started, I thought we would go over some
9 preliminary matters, make sure we're all on the same
10 page on everything. But before I get into my
11 preliminary matters, are there any preliminary matters,
12 which the parties wish to address with the Court?

13 MR. STERN: Your Honor, are we going to have
14 the opportunity for a brief opening statement after the
15 preliminary matters?

16 THE COURT: Oh, yes, yes.

17 MR. STERN: Then nothing at this time.

18 THE COURT: Absolutely. I just wanted to
19 kind of lay the groundwork for everybody, particularly
20 since we have pro se parties. I like to try to lay the
21 groundwork as best as possible, so everybody
22 understands as best as possible, you know, how
23 hopefully things will operate during the course of the
24 day today.

25 Anything you, the pro se Petitioning

TAGNETICS (19-30822) 10-18-19

5

1 Creditors, wish to raise with the Court at this time,
2 before I get into my preliminary matters?

3 DR. KAYSER: No, sir.

4 MR. EARLEY: No, thanks.

5 THE COURT: All right. Since Tagnetics has
6 filed a motion, we'll have Tagnetics -- after opening
7 statements, we'll have Tagnetics present its case.
8 They may call witnesses. They will first conduct
9 examination of any witnesses they have. We call that
10 direct examination. And then the Petitioning Creditors
11 will have the right to conduct any cross-examination of
12 those witnesses, and then Tagnetics will have the right
13 to conduct what we call redirect examination, if they
14 want, questions based upon any questions you may have
15 asked them, and then you would be entitled to conduct
16 any cross-examination of those witnesses.

17 Let's -- to the extent possible, let's avoid
18 going back over the same ground we've already gone
19 over, you know. And then after they complete their
20 case, after Tagnetics completes its case, then the
21 Petitioning Creditors will have an opportunity to
22 present your cases.

23 You each, in effect, have your own case, and
24 you can each call whatever witnesses you want in your
25 own cases. You may testify in your own cases.

TAGNETICS (19-30822) 10-18-19

6

1 Fortunately or unfortunately, this is not the first
2 time I've had pro se parties in my courtroom. It
3 creates an awkward situation -- it makes it more
4 awkward for hearings, because if you want to testify in
5 your own case, what you have to do is get in the
6 witness box, and in effect give a narrative, explain,
7 you know, what statements you want to state that you
8 think, you know, from an evidentiary factual viewpoint
9 support your position.

10 If an objection is stated during your
11 testimony, you need to make sure you stop and let me
12 rule on the objection, and then after I rule on the
13 objection, then you can proceed in accordance with my
14 ruling on the objection.

15 You will not be able to ask each other
16 questions. In effect, Mr. Kayser can't put Mr. Hager
17 on the stand and stand at the lectern and ask
18 questions, because unless any of you are lawyers -- my
19 understanding, none of you are lawyers; is that
20 correct?

21 DR. KAYSER: Yes.

22 THE COURT: That would constitute the
23 unauthorized practice of law. So you can testify in
24 your own cases, but you can't examine each other in
25 your own cases, and you can have, you know, each other

TAGNETICS (19-30822) 10-18-19

7

1 testify in your cases, but again, you're going to have
2 to get in the witness box and give a narrative of what
3 you think support the cases.

4 Let's see if there's anything -- are there
5 any questions on how that will operate?

6 DR. KAYSER: Yes, Your Honor. We had
7 intended to each call each other as witnesses and ask
8 the questions that apply to us all.

9 THE COURT: I kind of thought that might be
10 the case from the way you filed your witness list, but
11 you cannot do that. That is the unauthorized practice
12 of law. You will not be able to do that. You may feel
13 it puts you at a disadvantage, but you make conscious
14 decisions to hire lawyers or not to hire lawyers.

15 DR. KAYSER: Understood.

16 THE COURT: And because you didn't hire a
17 lawyer, I cannot -- I can't let you guys serve as
18 lawyers. You need to go to law school, pass a bar
19 exam, to do that. And since you haven't done that,
20 you're not entitled. That's the law. That's the law
21 in Ohio.

22 DR. KAYSER: Yeah. We're okay with it. We
23 do understand. Your Honor, I'm sorry to ask for a
24 clarification, but if each of us can call witnesses,
25 can we -- but we can't call each other as witnesses?

TAGNETICS (19-30822) 10-18-19

8

1 THE COURT: You can call each other as
2 witnesses, yes. You can do that. You each can get up
3 there and testify in what we call a form of a
4 narrative, stating your -- you know, what facts you
5 think support each other's cases, but one of you can't
6 be at the lectern asking another questions to elicit
7 that testimony. That's serving as a lawyer, and that's
8 the unauthorized practice of law, and you can't do it.

9 DR. KAYSER: Understood. Your Honor, one
10 question. How do we present the exhibits then?

11 THE COURT: You can just say -- well, you can
12 have the exhibits in the witness box, and then
13 describe, okay, you know, I'm looking at, and you have
14 to make sure that Tagnetics' counsel have copies of
15 those exhibits, so they know what you're testifying
16 about. And you can say, Your Honor, I'm looking at an
17 email dated July 20th, 2019, it's from me to Mr. Stern,
18 you know, and then that way you identify the document.
19 And then that's how. And then when you're done you can
20 move for admission of those exhibits, and that's how
21 you would introduce exhibits.

22 DR. KAYSER: We'll do our best.

23 THE COURT: I understand. It's -- you know,
24 it's -- that's what the law is. I have to enforce the
25 law and apply the law, and that's the risk you take in

TAGNETICS (19-30822) 10-18-19

9

1 the situation you're in, representing yourselves on a
2 pro se basis.

3 When we get done with all the evidentiary
4 presentations, you'll be able to make closing
5 arguments. That's where you have the opportunity to
6 stand at the lectern and argue why the facts, which
7 have been elicited today, support your legal position.

8 Now, with respect to the exhibits, I think
9 there's some overlap with the exhibits. It's from a
10 Court perspective, if you both -- let's say you both
11 have July 20th, 2019 email as an exhibit, the Court
12 finds it easier just to use one of those set of
13 exhibits. They're duplicative on each side, rather
14 than referring -- using two different copies of the
15 same exhibit.

16 To that extent, the Court's preference would
17 be to use Tagnetics' exhibits to the extent they're
18 duplicate, just because they're a little bit easier for
19 us to follow as they're more separate emails, for
20 instance. But that's the only reason. From
21 administrative ease purposes, that would work better
22 from the Court's perspective.

23 So if Tagnetics has introduced, you know, the
24 July 20th email, my preference is if you're going to
25 refer to the July 20th email, just to use Tagnetics'

TAGNETICS (19-30822) 10-18-19

10

1 exhibit for that, so we don't have to, like I say, have
2 duplicative same exhibits. And if Tagnetics has
3 introduced a document already, and particularly if I've
4 admitted it, you don't need to go through the process
5 of identifying it and having it admitted. It's already
6 been admitted. You can use that. We don't need to go
7 over that groundwork with an exhibit that's already
8 been admitted.

9 Any other questions before we get started
10 with opening statements?

11 MR. KRACHT: Your Honor, I just want to note,
12 one of our exhibits is a composite exhibit of all of
13 what we believe to be the relevant emails and it's
14 actually the A. Is that going to pose --

15 THE COURT: No, that's fine. I think that's
16 -- you know, as long as each one gets admitted or the
17 whole total gets admitted, that's fine.

18 MR. KRACHT: And if for some reason we would
19 have say one or two excluded, that could be removed
20 from the exhibit at the time.

21 THE COURT: Yeah, I think that's fine.

22 MR. KRACHT: Thank you.

23 THE COURT: Any questions from the
24 Petitioning Creditors? No, okay. Great. Why don't we
25 have opening statements then? Now, on the opening

TAGNETICS (19-30822) 10-18-19

11

1 statements -- go ahead and take the lectern, Mr. Stern.
2 I just want to ask, when you are making opening
3 statements or talking to Court, not as a witness,
4 please take the lectern. Our recording system works
5 much better that way. Now, if you're just making an
6 objection to a witness's testimony, you can just stand
7 up and make your objection from your seat, but
8 generally making presentations and lengthier
9 discussions with the Court, my preference is for you to
10 stand at the lectern. When you're testifying, you'll
11 be in the witness box.

12 I'm trying to think if there was something
13 related to that. Well, that's all I can think of. I'm
14 sorry, Mr. Stern. One other thing we could do, let's -
15 - what I'd like to do is have Ms. Behnken swear in the
16 three Petitioning Creditors and then we'll take a five-
17 minute break and you can make your opening statements.

18 The reason I'd like the Petitioning Creditors
19 to be sworn is what we have found after, like I said,
20 unfortunately having a number of pro se parties in the
21 courtroom before, it's difficult for them to separate
22 out what's a legal argument or a statement at the
23 lectern, versus testimony, and so it's easier for us
24 just to have them under oath for everything they state,
25 and that way we don't have to worry about well, was

TAGNETICS (19-30822) 10-18-19

12

1 that sworn testimony or not sworn testimony. So
2 anything you state, we're going to, in effect, treat as
3 sworn testimony, and swear you in now.

4 THE CLERK: Your Honor, are you okay with
5 swearing all of them at the same time?

6 THE COURT: Yeah, that's fine.

7 THE CLERK: Gentlemen, please stand.

8 (Petitioning Creditors sworn.)

9 THE CLERK: Thank you.

10 THE COURT: Okay, let's take a five-minute
11 recess and then you can make your opening statements.

12 THE CLERK: All rise. Court is in recess.

13 (Off the record from 9:50 a.m. until 9:58
14 a.m.)

15 THE CLERK: Court is again in session. You
16 may be seated.

17 THE COURT: Okay. I wanted to clarify one
18 thing. Now, we have to treat each of the Petitioning
19 Creditors' cases, in effect, as a separate case. Mr.
20 Kayser, if you want to call Mr. Hager or Mr. Earley in
21 your case, you can, and you can examine them from the
22 lectern. And Mr. Earley, you can do the same with Mr.
23 Kayser and Mr. Hager. And same with Mr. Hager, he can
24 call Mr. Kayser and Mr. Earley, and examine them.
25 That's -- a pro se party can do that. That's not the

TAGNETICS (19-30822) 10-18-19

13

1 unauthorized practice of law.

2 Now, Mr. Kayser though can't question
3 witnesses in Mr. Hager's case or Mr. Earley's case, and
4 vice versa.

5 DR. KAYSER: Okay.

6 THE COURT: So Mr. Kayser, if you want to
7 examine Mr. Earley and Mr. Hager in your case, you may
8 do so, and Mr. Earley, you can do the same with the
9 other two, and Mr. Hager, you can do the same with the
10 other two. You just can't serve as lawyers in anybody
11 else's case. Okay. I wanted to clarify that. We're
12 all on the same page with that?

13 DR. KAYSER: Yes, Your Honor.

14 THE COURT: Great. We ready for opening
15 statements?

16 MR. STERN: Yes, Your Honor.

17 THE COURT: You may proceed, Mr. Stern, and
18 then after Mr. Stern makes the opening statement for
19 Tagnetics, each of you can make your opening
20 statements, if you wish.

21 MR. STERN: Good morning, Your Honor. May it
22 please the Court, I am Stephen Stern on behalf of the
23 alleged Debtor, Tagnetics, Inc. We are here today on
24 our motion to enforce the settlement agreement. We
25 think the terms are pretty clearly set forth. The

TAGNETICS (19-30822) 10-18-19

14

1 pertinent email is a series of emails that I refer to
2 in the motion as our term sheet that were exchanged on
3 July 26, 2019, and it lays out very clearly the terms
4 of the -- the key terms of the agreement.

5 And as that email string reflects, the
6 alleged Creditors, not once, not twice, but three times
7 confirmed in writing the terms of that -- those key
8 terms of the settlement agreement, and this was
9 communicated to the Court, that we have an agreement in
10 place.

11 It was only after the fact, when we exchanged
12 the written settlement agreement, where we learned
13 about these alleged concerns that they had, clearly
14 going beyond the scope of the payment terms that were
15 set forth, and the phrase -- key phrase in the term
16 sheet says "full mutual releases, no carve-outs." And
17 as the Creditors are seeking, there's a number of
18 carve-outs that they are seeking.

19 One thing that I would like to point out, and
20 if there was any confusion when looking at our brief, I
21 refer to 123, there's a reference to an email in the
22 brief on July 26. It is on Page 6 of our brief, where
23 we copied the chart of an email that was sent from Mr.
24 Hager to me on July 26 at 4:42 on there. That was not
25 attached to our brief. That was our exhibits, Exhibit

TAGNETICS (19-30822) 10-18-19

15

1 I. That was added after the fact. Exhibits that we
2 put for our exhibits today do mirror the exhibits we
3 had attached to our motion, except Exhibit I is the
4 only added one, and that is the one that contains that
5 missing email there, in the event there's any confusion
6 on the part of the Court when looking through the
7 brief. My apologies about that oversight.

8 But as that third email reflects, in caps it
9 says, "Total settlement," with those numbers, and yet
10 the alleged Creditors are seeking additional payments
11 beyond that total settlement figure, and again seeking
12 exceptions to the full mutual releases, no carve-outs.

13 Those discussions happened over a period of
14 time, and those emails reflect, I repeatedly encouraged
15 the alleged Creditors to seek counsel, to advise them
16 on this process. And just to be perfectly frank, was
17 quite surprised when seeing the exceptions and the
18 additional payments that they were seeking after the
19 fact.

20 We think the settlement agreement, which was
21 -- I think it's Exhibit C -- Exhibit B, with the
22 exhibits, Exhibit 2, to the motion, accurately sets
23 forth the key terms of the agreement, and we're ready
24 to proceed with the evidence that supports that.

25 Thank you, Your Honor.

TAGNETICS (19-30822) 10-18-19

16

1 THE COURT: Thank you, Mr. Stern. Okay. One
2 of you want to at least start?

3 MR. EARLEY: Yes, sir, and I'll give the
4 opening statement for all three of us.

5 THE COURT: Okay.

6 MR. EARLEY: Your Honor, the Petitioning
7 Creditors intend to show that the terms of the proposed
8 settlement agreement offered on August 14th in no way
9 resembles the proposal forwarded -- put forth by the
10 Petitioning Creditors on July 20th, 2019.

11 We also will show that the negotiations
12 between Tagnetics and the Petitioning Creditors between
13 July 20 and July 26 only focused on cash payments, and
14 not any other term or terms of the agreement. The
15 evidence will show a significant difference in the
16 proposed settlement agreement, once Tagnetics secured
17 the postponement of the scheduled trial.

18 THE COURT: Thank you. I will accept that as
19 the opening statement of Mr. Earley. Mr. Kayser, do
20 you wish to state anything different? You don't need
21 to state the same thing Mr. Earley just stated. Is
22 there anything additional you --

23 DR. KAYSER: There's nothing more I need to
24 state until testimony.

25 THE COURT: Okay. So are you adopting Mr.

TAGNETICS (19-30822) 10-18-19

17

1 Earley's opening statement as your opening statement?

2 DR. KAYSER: Yes.

3 THE COURT: Okay, thank you. Same questions
4 for you, Mr. Hager.

5 MR. HAGER: I'll adopt his statement.

6 THE COURT: This all goes back to the fact
7 that you can't be each other's attorneys, and -- but I
8 don't want to cover the same ground if we don't have to
9 cover the same ground on this stuff. Okay. Mr. Stern,
10 do you have any witnesses you wish to call?

11 MR. STERN: Yes, Your Honor. I'll be the
12 testifying witness and Mr. Kracht will examine me.

13 THE COURT: Okay.

14 MR. STERN: I'm just going to take up with me
15 the binder of exhibits.

16 THE COURT: That's fine. I do have one
17 point. As you referenced Exhibit I, which you said was
18 not attached to your motion. It does not appear that
19 it's in my booklet either, so --

20 MR. STERN: Really? May I take a look at
21 that?

22 THE COURT: Yeah, absolutely, please. Ms.
23 Behnken.

24 MR. STERN: Does your binder have Exhibit I?
25 Okay.

TAGNETICS (19-30822) 10-18-19

18

1 THE COURT: Okay, thank you.

2 THE CLERK: Sir, please stand. Raise your
3 right hand.

4 MR. STERN: My apologies.

5 STEPHEN STERN, WITNESS, SWORN

6 THE CLERK: Please state your full name for
7 the record.

8 MR. STERN: Stephen with a P-H, Stern, S-T-E-
9 R-N.

10 THE CLERK: Thank you.

11 DIRECT EXAMINATION OF STEPHEN STERN

12 BY MR. KRACHT:

13 Q Mr. Stern, you're one of the lawyers for
14 Tagnetics in this case, correct?

15 A I am.

16 Q Can you provide some background of your nature
17 of your practice?

18 A Sure. I was admitted to practice in 1996, after
19 I graduated from GW Law School. I forget whether I was
20 admitted in October, November, December, but that was
21 when I was first admitted to practice, and have been
22 practicing for approximately 23 years.

23 My practice is litigation oriented. The early
24 part of my career did a lot of employment counsel
25 litigation and then over the last I'd say probably 15,

TAGNETICS (19-30822) 10-18-19

19

1 16 years, a good amount of commercial and business
2 litigation, in courts. And along the way, negotiated
3 many, many settlements.

4 Q Do you practice in the area of bankruptcy at
5 all?

6 A I do not.

7 Q So this is your first foray into that?

8 A It is.

9 Q But you do -- would you say that the majority of
10 your cases in your litigation practice go to trial, or
11 are they settled?

12 A Trial is definitely the exception. Most are
13 either resolved through settlement negotiations or on
14 motions.

15 Q Okay. And so the settlement that we're talking
16 about today in this case that we're seeking to enforce,
17 is that something that is unique in your experience of
18 how a settlement was negotiated?

19 A No. The only unique part I'd say is that this
20 happened while I was on vacation, the discussions.

21 Q What role did you play in connection with the
22 settlement negotiations with the Petitioning Creditors?

23 A Sure. I forgot the exact date. I can refer to
24 the exhibits, but we -- that week -- I guess the week
25 before I went on vacation, had some discussions. I

TAGNETICS (19-30822) 10-18-19

20

1 forgot whether it was with Mr. Kayser or Mr. Earley,
2 opening the door -- it may have just been the email,
3 when we first started communicating about the
4 possibility of having settlement discussions.

5 They happened on and off over that week, leading
6 up to the 16th. There was some discussions that were -
7 - or demands that were made by the alleged Creditors,
8 flat out rejected those. Then they made some -- then
9 we made some counteroffers. Those were flat out
10 rejected, and then the discussions really picked up in
11 earnest the 24th, 25th and 26th. Really, the 26th is
12 the key day.

13 Q Okay. I'm going to try to use this contraption
14 here, and if you can turn to Tagnetics' Exhibit A,
15 please?

16 A Okay.

17 Q If I can adjust this? Okay. Can you identify
18 Exhibit A?

19 A Sure. This is a series of emails, email string,
20 between me and the alleged Creditors. Even though
21 sometimes only one of the alleged Creditors' emails
22 appears, I remember on these emails, I was
23 communicating with all of them, and that's reflected on
24 some of them.

25 The email string starts on -- with an email from

TAGNETICS (19-30822) 10-18-19

21

1 me addressed to Mr. Kayser on Friday, July 19th, 2019,
2 at 4:14 p.m., and then you can see the series of emails
3 back and forth, where demands were made, rejected, and
4 the reflection of our settlement negotiations, at least
5 in writing, but does not account for every telephone
6 communication that occurred.

7 Q Okay. So Exhibit A then goes from most recent
8 to the earlier emails, so --

9 A Yes.

10 Q So it's in reverse order, correct?

11 A Correct.

12 Q Now, did you have any phone conversations during
13 this period with any of the Petitioning Creditors?

14 A I did. I don't remember speaking -- when we had
15 our first conversations. I may have spoken with Mr.
16 Kayser once or twice, but on the date -- key day, July
17 26, I was speaking primarily, if not exclusively, with
18 Mr. Earley.

19 Q Okay. Directing your attention to Exhibit A, if
20 you can go through several of those earlier emails,
21 where there are a number, it would appear, of both
22 monetary items that are being discussed, as well as
23 non-monetary items. Can you address those, please?

24 A Sure. I guess the first one does reflect that I
25 spoke with Mr. Kayser, either earlier that day or the

TAGNETICS (19-30822) 10-18-19

22

1 day before, because it opens up with, "Following up on
2 our conversation, this email identifies everyone who
3 should be copied on email communications, regarding
4 potential settlement discussions."

5 Q And that's the July 19 email, correct?

6 A Yes, and this is where I was setting the
7 groundwork, because I was going away on vacation the
8 following day. I wanted to make sure that people were
9 available to communicate, in the event I had trouble
10 being able to access email or phone calls. I wanted to
11 make sure my partner, Jon Kagan, was available to step
12 in if need be. Fortunately, there were no difficulties
13 communicating. I was able to communicate the entire
14 time, so he was not really involved in the process.

15 Q Okay. I'm directing your attention to the next
16 email in line there. It looks like it's July 20th at
17 4:54.

18 A Yes, I see that one.

19 Q And who is that from?

20 A That was sent from Mr. Kayser to me, and with a
21 CC to a number of other people involved in the case,
22 including the other alleged Creditors, you as my co-
23 counsel, and other people -- other attorneys that were
24 as co-counsel in the case.

25 Q Okay. And can you describe for the Court what

TAGNETICS (19-30822) 10-18-19

23

1 was the subject matter of that email?

2 A Sure. This reflects a substantive communication
3 about potential settlement, where Mr. Kayser, on behalf
4 of -- what I interpreted, on behalf of himself, and it
5 does say "our final offer," so I interpreted this to be
6 him speaking on behalf of him, Mr. Earley, and Mr. --
7 I'm drawing a blank.

8 Q Mr. Hager?

9 A Mr. Hager. My apologies. That they made
10 monetary demands, which are reflected there in the
11 first part of the email. You can see certain monetary
12 amounts to Mr. Earley, Mr. Kayser, Mr. Hager, with the
13 total being -- or payments to all three of them --
14 \$486,700 and change. And then it goes on to proceed
15 with setting forth other combination of non-monetary
16 demands, and some other monetary demands to be made, to
17 be included, as well, in the settlement.

18 Q And did you respond to those gentlemen?

19 A Yes. My response is reflected in the next email
20 in the string, which is on Page 5 of the exhibit. It's
21 an email from me to Mr. Kayser, Mr. Earley, Mr. Hager.
22 It's address to Ken, Ron and Jon. It's at 10:46 a.m.,
23 and in that email I acknowledge receipt of their
24 demand, and while I -- and I'm reading the second
25 sentence, "While I and the Tagnetics team appreciate

TAGNETICS (19-30822) 10-18-19

24

1 the overture to try to reach negotiated resolution,
2 event you put forward is not realistic." And I go on
3 to explain why what they're requesting is not even on
4 the table for a realistic settlement discussion.

5 Q Okay. And would you present to the Court what
6 those objections were to that proposal?

7 A Sure. So part of the problem was a large
8 monetary payment up front, initial payment, and that
9 was something I explained in Paragraph 2, that is not
10 feasible. Talked a little bit about some of the
11 structures to a deal that we could possibly accommodate
12 at the time, but was only -- what was a potential
13 possibility, not making any clear offer or saying this
14 will be a deal term.

15 Then in the third paragraph I go on to say,
16 "insisting on any other structure than what I've
17 outlined above all but assumes that we proceed with the
18 bankruptcy proceeding." So structurally they're
19 putting forth all these monetary terms, was way out of
20 line with what Tagnetics was willing or able to do.

21 Q Okay. Directing your attention to the response,
22 I take it, from that.

23 A Yeah. I'm just -- this is where I first
24 encouraged them to seek their own counsel in this --
25 I'm sorry, I did not do that there. Oh, no, I do. If

TAGNETICS (19-30822) 10-18-19

25

1 you look at the one, two, three, fourth email, I do at
2 the very end of that say, "You can and should seek your
3 own counsel, as I'm sure he or she will tell you the
4 same thing," the stuff that I was saying about what
5 happens if you proceed with bankruptcy.

6 Q That's the fourth paragraph on the July 23rd
7 email at 10:46; is that correct?

8 A Yes.

9 Q Did any of the Petitioning Creditors respond to
10 that communication?

11 A They did. A little while later, not much after
12 my email, Mr. Earley responded in an email at 1:34
13 p.m., again with some CCs on it, and then after
14 rejecting, without putting out any specific terms, he
15 then put forth a new offer, and it says, "Stephen, here
16 is our offer after your email this morning. Let me
17 know if there is any interest." And in that email
18 there's a chart that is reflected at the top of Page 5
19 of this email string, and it lays out a series of
20 monetary payments. There are no other terms referenced
21 in that email. It is strictly a monetary payment
22 chart.

23 Q And did you respond to that proposal?

24 A I did. My next email is the following day in
25 the afternoon. Looks like on July 24th at 5:56 p.m.,

TAGNETICS (19-30822) 10-18-19

26

1 just Ron, Ken and Jon, "Thank you for your revised
2 demand. This structure is more in line with what
3 Tagnetics thinks is feasible, but the initial payment
4 is way too high for a cash-strapped company." And I go
5 on to explain what we're looking at in terms of a
6 potential lower initial monetary payment. Then after -
7 - which we offered a lower number there.

8 "The remainder of the payment schedule, after
9 the initial payment you proposed, is acceptable,
10 provided that the payments are contingent," and I go on
11 to some contingencies. And I go on explaining that
12 further. And then just go on to continue explaining
13 that in the email.

14 Q Okay. Did you receive a response to your email
15 from any of the Petitioning Creditors?

16 A It was a flat-out rejection completely, email
17 from Mr. Earley later that evening, on the 24th. His
18 email is very short and succinct. It says, "Stephen,
19 no chance. Look forward to meeting you on Monday." So
20 no counter proposal or anything on that.

21 Q And that's reflected, is it not, in what's
22 referenced as a July 24, 2019 email from Mr. Earley to
23 you at 7:43 p.m., correct?

24 A That's correct, and that's on Page 3 of the
25 exhibit.

TAGNETICS (19-30822) 10-18-19

27

1 Q Did you respond to Mr. Earley's response?

2 A I did. The next day I sent a short email that
3 says, "It seems silly and, quite frankly, odd to simply
4 cut off negotiations. If there is a counteroffer you
5 would like Tagnetics to consider, please send it and I
6 will forward it to the company for consideration.
7 Continuing down this path essentially guarantees that
8 you, Ken and Jon do not receive any money, and each of
9 you are at risk for having to pay money, parens, and
10 the money that Ken received last week in settlement
11 through KBL is subject to a preference and will have to
12 be returned if the Court imposes a bankruptcy on the
13 company. I look forward to your response." And that's
14 on July 25th, 2019, at 12:42 p.m. from me to all three
15 of them, even though it only shows Ron's name there.

16 Q And that would be at the top of Page 3 of
17 Exhibit A, correct?

18 A Correct.

19 Q Okay. Did you receive a response from any of
20 the Petitioning Creditors to that email?

21 A I did. Later that day, looks like even less
22 than an hour later, I received a response from Mr.
23 Earley at 1:25 p.m., and that email is reflected at the
24 bottom of Page 2 of the exhibit, on to the top of Page
25 3, and again it's pretty short and to the point. It

TAGNETICS (19-30822) 10-18-19

28

1 says, "Stephen, they raised 90,000 for the first
2 settlement, they should be able to find another 90 for
3 us. Here is my counter proposal." And it lists that -
4 - well, I'll call the payment schedule chart that was
5 included below, with different numbers, and it shows an
6 initial payment 30,000 each, to each of the three
7 alleged Creditors, and then two subsequent payments at
8 six and 12 months, and then there is an additional
9 payment at -- upon the occurrence of what was referred
10 to as a liquidity event, and then the last line of that
11 chart shows the total payments to each of the three
12 alleged Creditors. No other terms or conditions are
13 reflected in that email or counter proposal from Mr.
14 Earley.

15 Q Okay. And that response shows up on Page 2, at
16 the bottom of Page 2, email from Mr. Earley, dated July
17 25th at 1:25, and the chart you're talking about
18 carries over onto the next page, top of Page 3,
19 correct?

20 A Correct.

21 Q Did you respond to that email?

22 A I did. The next morning at 8:24 a.m., I sent an
23 email, again, to -- responding, saying, "Ron, while we
24 appreciate your logic around the \$90,000" -- it says
25 "90k number," "\$90,000 number, you are miscalculating

TAGNETICS (19-30822) 10-18-19

29

1 the company's situation. We had hoped to negotiate
2 with you outside of court on settlement while the
3 parties pursued arbitration, as the terms of your
4 contracts require, but the Court ruled against that.
5 The company does not have an ability to raise another
6 90k in the near term. Now, unfortunately, the options
7 to avoid substantial risk on both sides is very
8 limited. The three of you prevail on Monday, your
9 claims will be worthless, and Ken and Bob, as well as
10 S-Tek and counsel for KBL, and S-Tek will have to
11 return the money they received last week. If Tagnetics
12 prevails, the company will move to require that you pay
13 all Tagnetics' attorneys' fees and litigation costs in
14 this matter, which are significant and growing by the
15 day."

16 Go on to proceed, "Tagnetics and I cannot
17 understand why each of you are pursuing the course of
18 action that essentially guarantees you will not get
19 paid the amounts you claim you are owed. The company
20 has made a reasonable proposal. I would like to hear
21 back from each of you on the company's most recent
22 proposal. Ken and Jon, I have not heard back from you
23 and I would like to know your position, as well. As
24 before, in light of the risks involved, I suggest you
25 seek advice from bankruptcy counsel. The path you have

TAGNETICS (19-30822) 10-18-19

30

1 chosen seems counterproductive and contrary to the
2 outcome you claim to seek."

3 Q Did you receive a response from any of the
4 Petitioning Creditors to that email?

5 A I did. So really -- well, what happened between
6 that and the next email, which is on this email string,
7 is at, looks like 3:27 p.m., or that email at 8:24
8 p.m., I remember this very distinctly, because that was
9 my last day of vacation. We were heading home that
10 day, and I was supposed to be driving. I was in the
11 passenger seat. Had a bunch of calls in the morning on
12 matters related to this and other stuff, and then
13 starting early in the afternoon, I remember it was
14 around one o'clock, give or take a little bit, the
15 phone calls became fast and furious between me and --
16 not exclusively Mr. Earley, certainly primarily with
17 Mr. Earley. I think it was exclusively with Mr.
18 Earley, where we were calling one another frequently,
19 going back and forth, trying to negotiate a settlement.
20 And we ultimately did reach one.

21 And I remember, when we finally came to terms on
22 one, I was very deliberate in how I worded things, and
23 one of the key terms, before we closed the deal, one of
24 the things that they insisted on, was that they get
25 full releases, completely, and I had some real concerns

TAGNETICS (19-30822) 10-18-19

31

1 about that, representing the company for certain
2 reasons that I don't think are pertinent here, but I
3 said, I'm duty bound to bring this to my client's
4 attention, I will do that, I will tell you I'm not
5 recommending it, but I'll let the client know. And
6 after some discussions with the CEO of the company, I
7 was told I was authorized to make an agreement that
8 included the monetary terms that we ultimately agreed
9 to, which are reflected in the email, but the key was
10 also full mutual releases, no carve-outs. And that's
11 reflected in my email later on that reflects the terms.

12 And I remember, the company was fine, giving the
13 three alleged Creditors full releases, despite some of
14 the reservations I had, as long as it was mutual, full
15 mutual releases, no carve-outs, and that was the phrase
16 that went over, over and over again, in my discussions.

17 Q And that discussion occurred on that issue as a
18 result of concerns that one or more of the Petitioning
19 Creditors had about claims that the company may have
20 against them, correct?

21 A Correct. They were very clear about that, and
22 wanted to be released from certain terms of other
23 agreements that they had with the company, and it was
24 adamant that that was not negotiable from their
25 perspective, and so they wanted to make sure that they

TAGNETICS (19-30822) 10-18-19

32

1 were fully released, and the company's response was, if
2 we're going to fully release them, we're going to get
3 full release, as well, and move on from there.

4 Q So was the concept of a mutual release with no
5 carve-outs dictated by the Petitioning Creditors?

6 A I think so, because they were the ones that was
7 driving it, and my client -- our client ultimately said
8 they were fine with it, as long as it's mutual, and
9 they were willing to go along with that.

10 Q Okay. Directing your attention to Page 1 of
11 Exhibit A, I think you referred to that in opening as
12 the term sheet?

13 A This is. This is where, after we had --
14 remember, there were many phone calls. When we finally
15 came to terms, I remember I said to Mr. Earley, I'm
16 going to then send you an email that sets forth the key
17 terms, and I want to make sure that I hear back from
18 you guys, confirming before we call the Court, that
19 this is what we agreed to. We should not be calling
20 the Court until we have an email exchange confirming
21 this is what we agreed to.

22 I was very sensitive to the fact that we have
23 pro se parties. I was also very aware of the
24 sensitivity of these negotiations. I was very, very
25 deliberate about this, because now that we were at that

TAGNETICS (19-30822) 10-18-19

33

1 point, I wanted to make sure there was no
2 misunderstandings. And I wrote it out that way too.
3 My email clearly says, at 3:27 p.m., "Ron, Kevin, Jon,
4 below sets forth the terms of the agreement we reached
5 by phone. Each of you please reply, confirming
6 agreement to these terms, and that I need you to
7 initiate a call to the Court to advise of the
8 settlement. It makes no sense for us to have to show
9 up at court on Monday, now that we have an agreement in
10 place that will be documented more thoroughly in a
11 settlement agreement. We can work on the written
12 settlement agreement over the weekend." And I wrote,
13 "Key terms: Payment of \$90,000 (\$30,000 each), within
14 three days of a fully executed agreement. The
15 remaining schedule of payments as you proposed below,
16 accepting 12 and 18 months instead of six and 12
17 months." And that's referring to the schedule that I
18 was referring to, the schedule chart that's reflected
19 in July 25th email.

20 And then that phrase, "full mutual releases (no
21 carve-outs)." Then another term, "Dismissal/withdrawal
22 of claims by each of you to be filed within one day of
23 receiving payment." And I said, "I believe this
24 captures the key terms we discussed. Please confirm."

25 And then I remember there was a bit of a delay.

TAGNETICS (19-30822) 10-18-19

34

1 I was a bit surprised by the delay. I called Mr.
2 Earley once or twice. I may have spoken with Mr.
3 Kayser. I don't remember exactly who I was speaking
4 with at this time. I'm pretty sure at least one of
5 them was Mr. Earley. And I said -- and I got an email
6 response from Mr. Hager at 3:56 p.m. saying, "Mr.
7 Earley is discussing this with the Court at this
8 moment. I am responding for Kayser, Early and Hager,
9 saying we agree to the terms put forth as documented
10 above." He wrote "above," but it's really -- I
11 interpret that to mean the email below. And so that
12 was confirmation number one, that the term sheet, as I
13 described it, in my 3:27 p.m. email, is agreed to and
14 confirmed.

15 Q Okay. Then at the top of Exhibit A on Page 1,
16 there's another email from Mr. Hager.

17 A Yes.

18 Q At 3:58, which is within the same time frame
19 here. And could you address that, as well?

20 A And there, so to me that's confirmation number
21 two. What he did is he copied my email at 3:27 p.m.
22 and copied it into his email. He says, "Stephen, I
23 will clarify that we agree to the terms you set forth
24 in your last email and represented below. Key terms."
25 And lists those four key terms that I just described

TAGNETICS (19-30822) 10-18-19

35

1 moments ago, and no other terms, none of these other
2 terms that were referenced in the July 20th email or
3 anything earlier. These are the key terms of the
4 settlement agreement.

5 Q All right. I'm asking you to refer now to
6 Exhibit I, which now the Judge has a copy of, as well.
7 Can you identify what Exhibit I represents?

8 A So again, there was some back and forth about
9 when I was going to hear from the Court. I ultimately
10 did speak with -- forgive me for referring to you by
11 your first name. I remember Joni. I don't want to
12 mispronounce the last name. I did eventually speak
13 with her.

14 I got an email from Mr. Hager at 4:09 saying,
15 "Stephen, the Court will be calling you momentarily to
16 confirm we have an agreement among all parties." And
17 then a short while after that, he sent another email to
18 me, again -- so for the third time, confirming the key
19 terms of the agreement. It's the top email in that
20 string on Exhibit I, July 26, 2019, it says at 4:36
21 p.m., and it's from Mr. Hager to me, with a copy to Mr.
22 Earley and Mr. Kayser. It says, "Stephen, to make sure
23 there is no confusion, we are confirming the following
24 payment schedule and amount as part of this agreement,"
25 and lays out that payment chart that I was referring to

TAGNETICS (19-30822) 10-18-19

36

1 earlier. It's the same exact one that we agreed to,
2 except the only difference is there's two differences,
3 or three.

4 The second and third payments instead of six and
5 12 months, now are written out to be 12 and 18 months,
6 which accurately reflects what we agreed to, and then
7 in the bottom line where totals of payments, it says,
8 "Total settlement," and the "Total" is written in all
9 caps, to me emphasizing the point, this is what we
10 agreed to, total settlement payment, nothing more
11 beyond that.

12 Q Thank you. Directing your attention now to
13 Exhibit B.

14 A B as in boy?

15 Q B as in boy. Can you identify that? I believe
16 there's an email on the first page.

17 A Yes. This is -- so the first page is the cover
18 email that I sent to Mr. Kayser, Mr. Earley and Mr.
19 Hager, attaching the draft settlement agreement. I
20 worked on the settlement agreement. Admittedly, it
21 took me a little bit longer than I had originally
22 anticipated. That was unfortunate, but I did get it to
23 them, out by the date that I committed to getting it to
24 them, after we had the status conference with the
25 Court, and then the subsequent pages of that exhibit

TAGNETICS (19-30822) 10-18-19

37

1 reflect what the agreement that I drafted, that I
2 believe accurately reflects and is taken off of the
3 term sheet, those email exchanges between me and the
4 alleged Creditors, on July 26th.

5 Q All right. I'm also directing your attention
6 now to Exhibit H, if you will. Originally there were
7 six Petitioning Creditors; is that correct?

8 A Correct. Originally six, three of which settled
9 out earlier in this case, and Exhibit H reflects a
10 redacted version of that settlement agreement with the
11 other three Petitioning Creditors in this case. Those
12 Petitioning Creditors were KBL Ventures, LTD, which I
13 understand to be owned by Mr. Kayser, one of the
14 remaining Petitioning Creditors and one of the people
15 here today, and that is reflected in -- at least as the
16 CEO, because if you look at the last page of that
17 exhibit, he is the one that signed on behalf of Kayser
18 Ventures, LTD. That's on Page 6.

19 The other settling Petitioning Creditors in that
20 settlement agreement were S-Tek, Inc., and a gentleman
21 by the name of Robert Strain.

22 Q You negotiated that settlement, as well; is that
23 correct?

24 A I did. I negotiated that settlement with Kayser
25 Ventures and S-Tek were represented by counsel and Mr.

TAGNETICS (19-30822) 10-18-19

38

1 Strain was proceeding pro se. Most of the negotiations
2 were with the attorney. There was some negotiations
3 separately with Mr. Strain, but not much.

4 Q Other than -- well, the redacted sections here
5 most likely deal with the monetary aspects of the
6 transaction, I take it?

7 A They were. It deals with the monetary aspects
8 of it, some non-monetary terms, typical language about
9 -- you know, I took out all those terms. I left in
10 here for purposes of this proceeding only the
11 introduction, just show who this is between, the
12 signature page again to show who it's between, and then
13 elements of or portions of the releases, because one of
14 the objections that we got subsequent to sharing the
15 draft settlement agreement was including Compass
16 Marketing, Inc., specifically among the releases. And
17 I was very, very surprised to see that, because first
18 of all --

19 Q What you're saying is that after you transmitted
20 what has been identified as a part of Exhibit B, the
21 settlement agreement, regarding the remaining
22 Petitioning Creditors, that one of the issues that came
23 up was whether or not there should be a carve-out as to
24 Compass?

25 A Yes. I'm sorry. Thank you for that

TAGNETICS (19-30822) 10-18-19

39

1 clarification. So, yes. After I transmitted Exhibit
2 B, one of the responses I got back from the alleged
3 Creditors was an objection to including Compass
4 Marketing, Inc., in the release. If you look at
5 Exhibit B for a moment, if you look at -- in Paragraph
6 -- in Section 4, Section 5 and Section 6, which are the
7 releases that would be provided by Mr. Kayser, in 4 Mr.
8 Early, in 5 Mr. Hager, and 6, I'll just read the
9 opening of Mr. Kayser's paragraph, because the language
10 mirrors itself. "In exchange for the consideration
11 described herein, Kenneth Kayser on his own behalf and
12 on behalf of his heirs, successors and assigns, as well
13 as all corporate and operating affiliates, related
14 entities, in which Kenneth Kayser has controlling
15 interest, hereby releases and discharges Tagnetics, as
16 well as its current and former parent companies,
17 corporate and operating affiliates, subsidiaries, and
18 related entities (including specifically Compass
19 Marketing, Inc., as well as each of their current and
20 former directors, officers, shareholders and other
21 equity holders, agents, employees, accountants,
22 attorneys, insurers, collectively the Tagnetics
23 releasees.)" And that language appears in each of the
24 release paragraphs.

25 The reason why --

TAGNETICS (19-30822) 10-18-19

40

1 Q Was this any different than the nature and scope
2 of the releases in the original settlement agreement
3 that's referenced as Exhibit H, with the --

4 DR. KAYSER: Your Honor, I object to this
5 line of questioning as relevance. I mean, what was
6 appropriate to settle with Kayser Ventures is not
7 necessarily appropriate with what a settlement would be
8 with the individuals who had contracts with Tagnetics.

9 THE COURT: Any response, Mr. Kracht?

10 MR. KRACHT: Yes, Your Honor. We're getting
11 to the point that we were going to try to make on that.
12 It has to do with whether there was a carve-out or not
13 that was requested and the logic of that, and how these
14 otherwise were similar agreements drafted after
15 negotiations by Mr. Stern, with the original -- the
16 other Petitioning Creditors that were released, which
17 included in part, because of his status with Kayser
18 Ventures, Mr. Kayser, as well.

19 THE COURT: I'm going to overrule the
20 objection, but let me state this. I'm going to let you
21 finish this questioning, but I'm going to be honest.
22 I'm very skeptical of the position that Compass -- this
23 argument or position that including Compass in the
24 release would be a carve-out. I don't understand that
25 from a legal perspective. I don't follow your argument

TAGNETICS (19-30822) 10-18-19

41

1 that including Compass in the release would be a carve-
2 out. And okay, I can understand that, if the July 26th
3 emails said based upon all the terms in the settlement
4 agreement with Strain and KB whatever, and so forth,
5 but that's not what the July 26th email says.

6 MR. KRACHT: Correct, Your Honor.

7 THE COURT: So I'm being honest with you, I'm
8 --

9 MR. KRACHT: Quite frankly --

10 THE COURT: I'm not buying it right now, and
11 you're going to have to do an awful lot of convincing
12 that including Compass in the release is a carve-out.

13 MR. KRACHT: We're not saying that, Your
14 Honor. We're saying that there was no carve-out,
15 saying that the release didn't apply to Compass. They
16 were a part of the overall release that was given. A
17 carve-out of Compass would have said, you know, the
18 Tagnetics, its officers, directors, affiliates, blah,
19 blah, blah, excepting Compass, which would give -- what
20 would have occurred if that happened, would have been
21 they would have been able to retain any claims they may
22 have against Compass. That would have been the carve-
23 out. We didn't agree to the carve-out.

24 THE COURT: I understand that's your
25 argument. I understand that.

TAGNETICS (19-30822) 10-18-19

42

1 MR. KRACHT: Mm-hmm.

2 THE COURT: But your July 26th emails don't
3 say Tagnetics, its affiliates, Compass, blah, blah,
4 blah. And so I don't know how you explode and include
5 your July 26 email to include all the affiliates and
6 everything, when the key terms and everything else,
7 from what I read, don't include affiliates and blah,
8 blah, blah, and officers and agents and blah, blah,
9 blah.

10 MR. KRACHT: That's why we're --

11 THE COURT: The settlement agreement does.

12 MR. KRACHT: That's why we're contrasting, to
13 the extent there is something to contrast, the earlier
14 settlement agreement, because there is a distinction,
15 there was a carve-out there that we were going to get
16 to.

17 THE COURT: Again, I'll let you proceed with
18 this questioning. I'll overrule the objection, but,
19 you know, I'm skeptical about this position.

20 MR. KRACHT: Understood.

21 MR. STERN: Well, as in every settlement
22 agreement I've drafted in my career on behalf of a
23 company, I don't think there's a single one that I
24 could think of off the top of my head, where I did not
25 include the entity itself that's a party to the case,

TAGNETICS (19-30822) 10-18-19

43

1 its parents, affiliates and subsidiaries. That's
2 standard operating procedure in any settlement
3 agreement, I think I've ever done in my entire career.
4 And in this case, an affiliate of Tagnetics is Compass
5 Marketing, Inc., and as evidenced by the fact that we
6 included specifically Compass Marketing, Inc. in the
7 prior settlement that Mr. Kayser had signed, to show
8 that this is not a surprise. This is something that
9 was standard procedure in settlements generally,
10 parents, subs, operating affiliates, so that's in all -
11 - typical in agreements, and in this case specifically
12 Compass, because Mr. Kayser had signed on that before.
13 And we didn't specifically mention Compass before that
14 either, until we got to the draft settlement agreement,
15 which Mr. Kayser signed, without objection.

16 So when I got the objection later on, after I
17 sent Exhibit B to the alleged Creditors, I was very
18 surprised. I'm just mirroring the language that was
19 acceptable before, and is typical in all sorts of
20 agreements about -- where you release affiliates,
21 parents and subs, and that's -- again, I don't think
22 I've ever done an agreement where it didn't include
23 that language.

24 BY MR. KRACHT:

25 Q Now, when you look at Exhibit H, the prior

TAGNETICS (19-30822) 10-18-19

44

1 settlement, there was a carve-out that was addressed in
2 that particular case, right?

3 A Yes, thank you. So we did have to include a
4 carve-out and we could provide an un-redacted version,
5 if need be. It is redacted in here. But the KBL
6 releases, because Mr. Kayser is an individual who owns
7 KBL, as we understood it, there is a carve-out at the
8 end of his -- of his release, because if you look at
9 the language -- I'm going to read Page 2, Section 5, of
10 Exhibit H.

11 "KBL releases. In exchange for the
12 consideration described herein, Kayser Ventures, LTD,
13 on its own behalf and on behalf of its current and
14 former parent companies, corporate operating
15 affiliates, subsidiaries and related entities, as well
16 as each of their current and former directors,
17 officers, shareholders and other equity holders," and
18 then go on and on. Releases, Tagnetics, and again has
19 the same language there, "its corporate operating
20 affiliates, subsidiaries and related entities,
21 including specifically Compass Marketing, Inc."

22 The reason why we had to include a carve-out at
23 the end of Section 5, because we knew that Mr. Kayser
24 had his own individual claims, and based on that
25 language, we did not negotiate a separate settlement

TAGNETICS (19-30822) 10-18-19

45

1 for his individual claims. We knew that he was
2 proceeding on those. It was part of the understanding
3 of the deal terms. It would have been intellectually
4 dishonest to try to -- try to get a release of his
5 individual claims, when you had the KBL claims and were
6 only negotiating about KBL at the time. We were not
7 negotiating about Mr. Kayser's individual claims.

8 So, at the end of this paragraph -- it is
9 redacted, but we could provide an un-redacted version.

10 DR. KAYSER: Your Honor, I object. I do not
11 have in front of me what he's reading from, and so I
12 can't follow what's going on here. And in addition,
13 this is irrelevant. What Kayser Ventures' settlement
14 said does not affect and was never meant to affect, and
15 my counsel for Kayser Ventures isn't here.

16 THE COURT: Do you have -- let me ask you,
17 Mr. Kayser, do you have their exhibits in front of you?

18 DR. KAYSER: But it's redacted in there,
19 also. And I didn't bring with me the settlement
20 agreement from Kayser Ventures.

21 THE COURT: Well, I think he was reading from
22 -- is the carve-out redacted or is the carve-out -- are
23 the carve-outs redacted?

24 MR. STERN: It should be at the end of --

25 THE COURT: I'm going to sustain the

TAGNETICS (19-30822) 10-18-19

46

1 objection then. If you're talking about something that
2 was redacted from the exhibit, I agree. I think Mr.
3 Kayser is absolutely right, and I'm going to sustain
4 the objection, to the extent you're testifying about
5 him trying to read something that's redacted from an
6 exhibit. And let me say this much, I will probably --
7 if they move admission of Exhibit H, I will probably
8 admit it, but I'm, again, being forthright and honest,
9 from what I've seen of everything, I tend to agree,
10 Exhibit H, I think, is irrelevant. I'm being
11 forthright and honest with you. You know, I think
12 really for the most part, Exhibit H is irrelevant,
13 because what you -- what terms you entered into with
14 other parties on another settlement, even though a same
15 case, I'm struggling to understand the relevance to
16 settlement with these three other parties.

17 MR. KRACHT: Just a question, Your Honor.
18 Would it be permissible to substitute Exhibit H,
19 redacted version, with a revised version that shows
20 that language that we're talking about now?

21 THE COURT: Is there objection --

22 DR. KAYSER: Yes, I would object in that it's
23 irrelevant.

24 MR. KRACHT: Mr. Kayser was a party to --

25 DR. KAYSER: It's a separate entity. The

TAGNETICS (19-30822) 10-18-19

47

1 fact that I happened to be the chairman of that company
2 is not relevant to this portion of the case.

3 THE COURT: Mr. Earley, any objection?

4 MR. EARLEY: I object also. I agree.

5 THE COURT: Mr. Hager?

6 MR. HAGER: I object, likewise.

7 THE COURT: Yeah, I'm going to sustain those
8 objections. You know, we had exhibit filing date, and
9 that's why we have exhibit filing dates. You had
10 plenty of opportunity to consider this. And now you
11 want to substitute one that you think is more favorable
12 to you than the one you submitted in this largely
13 redacted version. And not only that, I mean, I often
14 will allow exhibits to be introduced, even though they
15 missed the filing date, but I do -- again, coupled with
16 the fact that I do believe Exhibit H is not -- is
17 largely, if not totally, irrelevant to what's before me
18 today, I'm going to sustain the objection.

19 MR. KRACHT: Thank you, Your Honor.

20 THE COURT: To the request you've made.

21 BY MR. KRACHT:

22 Q Okay. Mr. Stern, if you can look to Exhibit C?

23 A Yes.

24 Q Can you identify that document?

25 A This is an email from me to Mr. Hager, with a

TAGNETICS (19-30822) 10-18-19

48

1 copy to Mr. Kayser, and Earley, on August 19, 2019, at
2 7:48 p.m., where I am responding. It's an email
3 string. That's the most recent one in the string was
4 the one I just identified. There's an earlier email in
5 this string from Mr. Hager to me, with a copy to Mr.
6 Kayser, Mr. Earley, on August 16th, 2019, at 2:19 p.m.

7 Q And that's on Page 2 of Exhibit C, correct?

8 A Yes, and in that first email in the string, from
9 Mr. Hager, it sets forth a number of objections that
10 they have to the terms -- the written terms of the
11 settlement agreement, that I provided to them, as in
12 Exhibit B, on August 14th.

13 Q Okay. And you responded to those objections to
14 the settlement agreement?

15 A I did, and that's my August 19th email to them,
16 which is the first page of the exhibit, where I try to
17 go through the substantive discussions and explain, you
18 know -- I mean, I guess my opening line is, "Many of
19 the terms included below clearly fall outside the scope
20 of what we agreed to, the email exchange we had on July
21 26, 2019, at 3:56 p.m. and again at 3:58 p.m."
22 Apparently some of the times must have been flipping
23 back and forth in the emails, now that I'm looking at
24 this. "Without going blow by blow, the terms of
25 Paragraph 4 clearly call for payments that were not

TAGNETICS (19-30822) 10-18-19

49

1 included in the July 26 email exchange, setting forth
2 the settlement payments. In addition, those requests
3 for additional payments clearly seek an exception to
4 the full mutual releases, no carve-outs. I'm not sure
5 how you can now ask for payments that were not
6 previously agreed to, seek exceptions to full mutual
7 releases, no carve-outs."

8 And it goes on to explain those a little bit
9 more detail. I'm going, again, back to the full mutual
10 releases, no carve-outs, that's a repeated theme of
11 these discussions. There's some other terms at the
12 bottom, where they were making a request for default
13 judgment. Again, that was something that was
14 entertained in earlier emails. I'd have to look back
15 at email or Exhibit A. I think it was on the 20th. It
16 was around where maybe 23rd, 24th, where the discussion
17 of default judgment was a possibility, but it clearly
18 wasn't one of the terms that were agreed to, because
19 there were not one, not two, but three emails
20 confirming the key terms of the agreement, without any
21 discussion for these other non-monetary terms. Not
22 once was that included.

23 Q And those non-monetary terms would have been
24 various carve-outs that they were seeking now after the
25 fact?

TAGNETICS (19-30822) 10-18-19

50

1 A Correct.

2 Q Directing your attention to Exhibit D.

3 A Yes.

4 Q Can you identify that, please?

5 A So this is a response to -- another response to
6 the draft settlement agreement I provided on the 14th.
7 This is an email from Mr. Earley on the 16th at 11:52
8 a.m., and he expresses concerns similar to Jon Hager's,
9 and added a few other terms about a \$30,000 loan
10 accruing interest, and then something related to stock
11 ownership. He refers to Jon's, even though Jon's
12 didn't come to me until later in the day, I believe.
13 So obviously they -- I'm assuming they exchanged
14 discussions or emails and didn't realize the timing of
15 events, but these two were -- I interpreted as being
16 sent in collaboration with one another.

17 Q Directing your attention to -- we'll skip over
18 E. If you'd take a look at Exhibit F?

19 A And then this is -- Mr. Earley apparently sent
20 an email to Mr. Hager and Mr. Kayser on August 20th,
21 2019, at 5:13 p.m., which he subsequently forwarded to
22 me on the 21st of August at 7:25 a.m., and it was only
23 to me, where they're identifying some additional
24 concerns about the settlement agreement, based on a
25 conversation that Mr. Earley had with a lawyer. There

TAGNETICS (19-30822) 10-18-19

51

1 were concerns about the general release language. It
2 sought a new provision that wasn't discussed before, an
3 acceleration clause for payments, something about a
4 non-compete agreement, which was not previously
5 discussed, and changing the voluntary dismissal of this
6 proceeding to without prejudice, instead of with
7 prejudice. And then another statement about some
8 \$30,000 loan, all of which we did not discuss
9 previously.

10 Q So --

11 A The only thing that might arguably have been
12 discussed, but again was Item 1, where they're making
13 an exception for Compass Marketing, but again from my
14 mind, full mutual releases, no carve-outs, that means
15 all parents, subs, and operating affiliates. Compass
16 Marketing is an operating affiliate under Ohio law, as
17 I understand it, because of its ownership interest in
18 the entity. We just decided to identify specifically
19 in the agreement, so that there wasn't an ambiguity
20 about that later on, because under Ohio law, as I
21 understand it, it constitutes an affiliate.

22 Q So how did you and Tagnetics view these post-
23 settlement communications from the Petitioning
24 Creditors?

25 A Sure. I guess -- I want to be careful about not

TAGNETICS (19-30822) 10-18-19

52

1 revealing privileged communications, but Tagnetics was
2 surprised. I was certainly surprised. This to me was
3 clearly outside the scope of what we agreed to. I was
4 -- as I mentioned earlier, I wanted to be very careful
5 about how I communicated those terms at the end, before
6 we called the Court. And as I mentioned before, there
7 is not one, not two, but three confirming emails to
8 them, confirming the total payments and what the key
9 terms were, repeating the full mutual releases, no
10 carve-outs. So this to me looked like more and more
11 exceptions. To use the phrase, buyer's remorse. I
12 don't know why there's been a change of heart, it
13 seemed to me, but that's the way I was interpreting it,
14 and that's the way I can fairly describe what
15 Tagnetics' reaction was, as well.

16 Q Okay. If you'll take a look at the next
17 exhibit? I believe it's the final one, Exhibit G.

18 A Okay.

19 Q Can you identify that?

20 A Sure. This looks like -- let me go back to the
21 first email here. This is more in the string of the --
22 so the first email in the string is from Mr. Hager to
23 me, with a copy to Mr. Kayser and Mr. Earley, on August
24 16th, where they identified their concern slash
25 objections to the settlement agreement that I provided

TAGNETICS (19-30822) 10-18-19

53

1 on the 14th.

2 The next email in that string is my response
3 that we had identified earlier. I think that was
4 Exhibit D. No, C is the next one in that string, I
5 believe, if I'm reading them correctly. Yes. And then
6 this is a response to my August 19th email, and this
7 came from Mr. Hager to me, with a copy to Mr. Kayser
8 and Mr. Earley on August 20th, 2019, at 9:23 a.m.,
9 again trying to explain what I saw as the different
10 terms and conditions than what we had agreed to on July
11 26th.

12 Q Essentially then, to try to re-trade the
13 settlement that was reached on July 26th?

14 A Yes.

15 MR. KRACHT: I have nothing further, Your
16 Honor.

17 THE COURT: Thank you, Mr. Kracht.

18 MR. KRACHT: Would you entertain introduction
19 at this time or would you prefer to do that --

20 THE COURT: Yeah, I think that would be fine,
21 if you want to move admission.

22 MR. KRACHT: I'd like to move to admit
23 Exhibits A through I.

24 THE COURT: Did you cover Exhibit E?

25 MR. KRACHT: I did not, and if I could have a

TAGNETICS (19-30822) 10-18-19

54

1 minute talking to my co-counsel, would that be
2 permissible?

3 THE COURT: Yeah, you may do so. Unless you
4 want to be on the record with this discussion, I'd get
5 away from a microphone. Yeah, Petitioning Creditors,
6 you can figure out whether you have any objections to
7 admission of these exhibits and if you want to, you
8 also -- I'll wait.

9 (Pause.)

10 MR. KRACHT: Your Honor, after conferring
11 with co-counsel, I'm going to, if you would permit, ask
12 him a few questions about that exhibit.

13 THE COURT: That's fine.

14 BY MR. KRACHT:

15 Q Directing your attention to Exhibit E.

16 A Yes.

17 Q Can you identify that, please?

18 A Sure. When preparing the motion to enforce the
19 settlement agreement, I drafted this declaration for
20 Mr. Luis Fernandez, where -- who was the CFO of
21 Tagnetics, and he is now -- at the time he signed this,
22 he was Acting CFO, and so I drafted this, sent it to
23 him, asked him to make whatever tweaks or modifications
24 he needed to make. He made a few small tweaks, signed
25 this and sent it back to me to include with our brief

TAGNETICS (19-30822) 10-18-19

55

1 on the motion to enforce settlement agreement.

2 Q Okay. And it addresses what particular point?

3 A It addresses specifically Compass Marketing,
4 Inc.'s ownership interest in Tagnetics, Inc.

5 Q And that was to what, demonstrate that it's an
6 affiliate?

7 A Yes. To show -- because with the research that
8 I had conducted under -- or my office had conducted and
9 shared it with me, so I didn't actually do the
10 research, to make sure I'm accurate in my statement to
11 the Court. So, but based on my firm's research, under
12 Ohio law, an affiliate is any person, and a person is
13 defined as an individual or a corporate entity, that
14 owns more than ten percent of another company. And in
15 this case, based on the ownership interest of Compass
16 Marketing having more than ten percent, we deemed it to
17 be an affiliate under Ohio law.

18 Q Okay, thank you.

19 MR. KRACHT: Nothing further, Your Honor.

20 THE COURT: Okay. And you're moving
21 admission of Exhibits A through I?

22 MR. KRACHT: Yes, Your Honor, correct.

23 THE COURT: Okay. Petitioning Creditors, you
24 can let me know if you have any objections to the
25 admission of any of those exhibits. You also have the

TAGNETICS (19-30822) 10-18-19

56

1 right to, if you want to ask Mr. Stern or any other
2 witnesses questions about those exhibits, because you
3 dispute their authenticity or something like that,
4 before I admit them, you have the right to do that too.
5 So if you want to have me reserve my ruling on the
6 admission of those exhibits until you have the
7 opportunity to examine witnesses about those exhibits,
8 we can do that also.

9 DR. KAYSER: Your Honor, I'm concerned about
10 the admission of this particular affidavit.

11 THE COURT: Exhibit E, Mr. Fernandez's
12 affidavit?

13 DR. KAYSER: From Luis Fernandez, yes. And
14 the reason being that, you know, I was a long-time
15 director of this company, and as of the time of my
16 serving on the Board of Directors, Compass Marketing
17 was not a ten percent shareholder of this company. And
18 that action may have taken place after the petition for
19 involuntary bankruptcy was filed, and I would have to
20 contact the lawyer, and we don't have Luis Fernandez
21 here to testify when this change to the ownership of
22 Tagnetics occurred, and I think that's an important
23 consideration.

24 THE COURT: I think Mr. Kayser is making a
25 hearsay objection to the admission of Exhibit E. He

TAGNETICS (19-30822) 10-18-19

57

1 didn't label that as a hearsay objection, but I think
2 he articulately objected to Exhibit E on the basis of
3 it being hearsay. Mr. Earley, do you have an objection
4 to the admission?

5 MR. EARLEY: I also object.

6 THE COURT: Mr. Hager?

7 MR. HAGER: Also object.

8 THE COURT: Based upon their objections, I
9 will not admit Exhibit E. I think it is flat-out
10 hearsay. Mr. Kayser articulately stated why hearsay
11 should not be admitted, particularly hearsay such as
12 this, an affidavit of somebody who is not testifying
13 today, that they do not have the ability to cross-
14 examine on these statements. So I will not admit
15 Exhibit E.

16 (Exhibit E rejected.)

17 THE COURT: What about the other exhibits,
18 Mr. Kayser and Mr. Earley and Mr. Hager, other than E?
19 Is there an objection or do you want me to reserve
20 ruling on those exhibits?

21 DR. KAYSER: Can we have just a moment, Your
22 Honor?

23 THE COURT: Yeah, absolutely. In fact, why
24 don't we take a five-minute recess? You can discuss
25 those and then we'll --

TAGNETICS (19-30822) 10-18-19

58

1 DR. KAYSER: Appreciate it. Thank you.

2 THE COURT: -- come back after a five-minute
3 recess.

4 THE CLERK: All rise. Court is in recess.

5 (Off the record from 11:02 a.m. until 11:14
6 a.m.)

7 THE CLERK: Court is again in session. You
8 may be seated.

9 THE COURT: Okay. We finished, I think, with
10 the direct examination of Mr. Stern. And Mr. Kracht
11 proposed the admission of Exhibits, Tagnetics' Exhibits
12 A through I. I already ruled on Exhibit E and
13 determined that E would not be admitted, based upon it
14 being hearsay, and I don't believe there's any
15 exception to the hearsay rule, which would cover an
16 affidavit of a person who is not here to testify.

17 And so I think that leaves the remaining
18 exhibits. And the Petitioning Creditors were
19 conferring as to whether they had any objections to the
20 admission of those other exhibits. So I think that's
21 where we lie.

22 Mr. Kayser, any objection? And as I pointed
23 out earlier too, if you want the Court to reserve
24 ruling on admission of these other exhibits until you
25 have the opportunity to examine Mr. Stern or any other

TAGNETICS (19-30822) 10-18-19

59

1 witnesses, concerning those exhibits, that's also
2 something which the Court can do. So that being said,
3 Mr. Kayser?

4 DR. KAYSER: I don't believe I have any
5 objection to the other exhibits. They are primarily
6 documents --

7 MR. HAGER: Your Honor, I guess the question,
8 when you mention if we would like to cross, do we
9 suggest that we reserve your ruling or --

10 THE COURT: You can still cross. You'll
11 still have the opportunity to cross-examine Mr. Stern
12 about his --

13 MR. HAGER: Sorry.

14 THE COURT: -- testimony. It's a good
15 question. It's a good question. You still have the
16 right to cross-examine Mr. Stern. All I was -- point I
17 was making is -- is if you want me to reserve ruling on
18 admission of the other exhibits, until you cross-
19 examine Mr. Stern, because you may have some issue
20 about the authenticity or something of any of these
21 exhibits, I can reserve ruling on admission of those
22 exhibits until you have that opportunity.

23 MR. HAGER: Thank you.

24 THE COURT: So I believe Mr. Kayser said he
25 has no objections to admission of the other exhibits,

TAGNETICS (19-30822) 10-18-19

60

1 other than, you know, Exhibit E. Mr. Earley, what
2 about you?

3 MR. EARLEY: The same. No objections.

4 THE COURT: Mr. Hager?

5 MR. HAGER: I have no objections.

6 THE COURT: Okay. Then the Court will admit
7 Tagnetics' Exhibits A through I, except for E. We are
8 not -- the Court is not going to admit Exhibit E, but
9 will admit the other exhibits.

10 (Exhibits A, B, C, D, F, G, H, I admitted
11 into evidence.)

12 MR. KRACHT: Thank you, Your Honor.

13 THE COURT: Okay. Now I think we're ready
14 for any cross-examination of Mr. Stern. Mr. Kayser, do
15 you wish to cross-examine Mr. Stern?

16 DR. KAYSER: I have a few questions for Mr.
17 Stern, yes.

18 CROSS-EXAMINATION OF STEPHEN STERN

19 BY DR. KAYSER:

20 Q Mr. Stern, on -- from the email of July that I
21 sent to you on July 20th, did that form the basis for
22 the remainder of our negotiations?

23 MR. KRACHT: Objection. Do you have an
24 exhibit you can refer to, please?

25 DR. KAYSER: It's our Exhibit 1, and I

TAGNETICS (19-30822) 10-18-19

61

1 believe it was your Exhibit --

2 MR. STERN: Looking at Exhibit A, what is
3 Page 6 of the -- is that the one you're referring to?

4 BY DR. KAYSER:

5 Q Yeah.

6 A I don't know if I'd describe it as it forms the
7 basis of our subsequent negotiations, because I
8 responded by rejecting that email, and then I think
9 really where -- if you wanted to talk about one that
10 really forms the basis of it, you could maybe point to
11 either the July 23rd email from Mr. Earley, or the July
12 25th email from Mr. Earley, where those -- some of the
13 charts were there, and that set forth the terms.

14 Q Would you read the top to the first line of that
15 email to me?

16 A Which email are you referring to?

17 Q The July 20th email, Exhibit 1 or Exhibit A.

18 A So the first line says, "Stephen, as time is
19 very short, you should consider this as our final
20 offer. If your client agrees to these terms, we will
21 send a letter to the Judge, indicating we have reached
22 an agreement. This entire transaction must be
23 completed, including the transfer of funds, in time to
24 cancel the trial." That's the opening paragraph I just
25 read.

TAGNETICS (19-30822) 10-18-19

62

1 Q Doesn't that statement presume that our position
2 was, this is our final offer?

3 A It does say it was the final offer, but
4 obviously it wasn't.

5 Q Did we subsequently agree to renegotiate the
6 payment schedule?

7 A I don't know about renegotiate. That suggests
8 that there was an agreement in place and then we're
9 modifying it.

10 Q In your response to this document -- let me find
11 the right response. Can you give me -- in the response
12 to that, in Exhibit -- same exhibit. Okay. Page 5 of
13 Exhibit A.

14 A So my response --

15 Q The only objection you state in here is an
16 objection to the cash amount and to the payments --
17 actually, to the payment schedule.

18 A That's not correct. The opening paragraph of my
19 response on July 23rd is two sentences. My opening
20 sentence says, "I'm in receipt of your demand to
21 resolve the litigation involving Tagnetics." Second
22 sentence says, "While I and the Tagnetics team
23 appreciate the overture to try to reach a negotiated
24 resolution, the demand you put forward is not
25 realistic."

TAGNETICS (19-30822) 10-18-19

63

1 Q And the next statement is, the next sentence?

2 A Yeah, and I go into some of the discussion, but
3 I -- I didn't qualify --

4 Q The only thing discussed in this email is the
5 amount of cash, not the terms and conditions. Why
6 didn't you include any argument about the terms and
7 conditions?

8 A That is not correct. If you look at the email
9 further down, there is a discussion about the default
10 judgment, so it's not only about monetary terms. I
11 remember that was one of the discussions that we were
12 having. So it's not limited only to monetary terms.
13 And as the final email on July 26 reflected, there were
14 non-monetary terms addressed in that.

15 Q Can I ask you about your use of the word carve-
16 out? That doesn't seem to be -- is that a good legal
17 word to use?

18 A Well, it was -- I don't know how to really
19 answer that. Let me try my best. So it says, the
20 phrase that we're using on the 26th says, "full mutual
21 releases, no carve-outs." No exceptions would be
22 another way of saying it.

23 Q What's the definition of the word carve-out?

24 A I would describe it as an exception to whatever
25 is agreed upon in terms of whatever the scope of the

TAGNETICS (19-30822) 10-18-19

64

1 agreement is. In this case, we're talking about
2 releases.

3 Q Is it a good legal word? I'm just asking you
4 whether, as a lawyer, do you think that carve-out is a
5 clear word to use, without knowing what the context in
6 which carve-out is used?

7 A I've used that phrase before. Other lawyers
8 have used that phrase before. It's not the first time
9 by any stretch in the course of my career, and the
10 phrase "carve-out," at least referencing July 26th as
11 the point it follows -- I'm reading from my email at
12 3:27 p.m., which is on Exhibit A. Full mutual
13 releases, parens, no carve-outs, so meaning no
14 exceptions to the mutual releases.

15 Q But you're adding a context to it, and is carve-
16 out a word that's defined by context?

17 A I think every word requires an examination of
18 context.

19 Q Have you ever looked carve-out up in a
20 dictionary?

21 A I have not.

22 Q Then I can't ask you what it says. But carve-
23 out -- I can't testify here.

24 One last question. In the settlement agreement
25 you sent us on August 14th, why did you mention Ron

TAGNETICS (19-30822) 10-18-19

65

1 Earley's loan in the section on Ron Earley, if you had
2 dismissed all of these terms?

3 A I know it was referenced at one point and we
4 limited to the monetary terms, as the chart reflects on
5 Mr. Earley's 25th email, and then again on Exhibit I,
6 the email that was sent by Mr. Hager, showing the
7 entirety of the monetary terms. And I was just
8 reiterating that that loan is not part of this, because
9 it says, "total settlement." There's no other monetary
10 payments to be made.

11 Q Exhibit --

12 A It is not unusual in my experience, at least the
13 way I draft agreements, when there is some discussion
14 of some point about maybe some other side term,
15 whatever the case may be, or some other agreement
16 that's out there, I like to make sure when there's a
17 release, we're enunciating the entire list of things,
18 to make sure that there's no argument later on --

19 Q So you --

20 A -- that I didn't include that or wasn't clear.

21 Q So in your -- it was mentioned in the settlement
22 agreement that you were wiping out Ron's loan; is that
23 how you would characterize it?

24 A I'd have to look back to the settlement
25 agreement that I drafted that I have a recollection of

TAGNETICS (19-30822) 10-18-19

66

1 including some references to other agreements.

2 Q If you did that with Ron Earley's loan, why
3 didn't you do it with the other outside-the-contract
4 dollar amounts that -- for instance, the Kayser
5 Ventures, Core Technology license and also the other --
6 the deferred salary that was to be excluded in our
7 document?

8 A Well, that's not accurate either, because if you
9 look at your release and this language is mirrored in
10 Mr. Earley's release and it is mirrored in Mr. Hager's
11 release. I'm looking at Page 3 of Exhibit B. I don't
12 want to reread the entire paragraph, but I go through
13 an illustrative list of examples, whether known or
14 unknown, by statute, contract or otherwise, including
15 but not limited to any claims for -- so I'm now
16 articulating the various types of claims you or any of
17 your colleagues may bring against Tagnetics. Unpaid
18 wages, Romanette one. Romanette two, unpaid notes or
19 other loans, including unpaid interest.

20 Q All right. I have no other questions.

21 A Romanette three, unpaid dividends. I think it's
22 important that I complete my testimony here. Profits
23 or other distributions. Romanette four, unpaid
24 royalties. Romanette five, breach of contract
25 regarding goods or services provided or rendered, or

TAGNETICS (19-30822) 10-18-19

67

1 equipment loaned to Tagnetics. Romanette six, breach
2 of express or implied contract or unjust enrichment.

3 DR. KAYSER: Your Honor --

4 MR. STERN: Romanette seven --

5 DR. KAYSER: -- I'm done questioning.

6 THE COURT: Okay.

7 MR. STERN: I'm just answering the question
8 that was asked.

9 THE COURT: I understand. Yeah, and you're
10 referring to the draft settlement agreement, and I
11 think we can read the rest of that.

12 MR. STERN: Okay. They are a list of
13 illustrative types of claims.

14 THE COURT: You made your point in response
15 to his question. No further questions of Mr. Stern?

16 DR. KAYSER: You guys? Jon?

17 THE COURT: Mr. Kayser, you have no further
18 questions?

19 DR. KAYSER: Yes. No further questions.

20 THE COURT: Okay, thank you. Mr. Earley, do
21 you have any?

22 MR. EARLEY: No, I have no questions.

23 THE COURT: And if I don't state it, if they
24 -- the way I will phrase it is you can -- if Mr. Kayser
25 has asked questions, you don't need to ask the same

TAGNETICS (19-30822) 10-18-19

68

1 questions. If there is additional testimony which you
2 wish to elicit in your case, you may do so, but you
3 don't have to re-elicite any testimony or evidence
4 that's already been introduced. But that -- and that's
5 going to run through, throughout the day today. That's
6 going to be the rule. You don't need to re-elicite
7 testimony or evidence that's already been elicited in
8 anybody's else's case. So with that caveat, anything
9 additional you wish, Mr. Earley, to cross-examine Mr.
10 Stern on?

11 MR. EARLEY: No, sir.

12 THE COURT: Okay, thank you. Same thing, Mr.
13 Hager, any additional --

14 MR. HAGER: I do have some questions.

15 THE COURT: Yes, you may.

16 MR. HAGER: And I'm not revisiting the same
17 issue, but it is the same word, but only for a reason.

18 THE COURT: That's fine.

19 BY MR. HAGER:

20 Q So Mr. Stern, who introduced the word "carve-
21 out" on our phone call at I believe it was 12:44 on
22 July 26, that phone call that was between Mr. Earley,
23 Mr. Kayser, myself and you?

24 A I don't remember who brought that up. It would
25 be speculation, based on my general recollection of

TAGNETICS (19-30822) 10-18-19

69

1 discussions, but I have no specific recollection of
2 that.

3 Q Do you remember specifically what the topic that
4 we were discussing, that we had disagreement about,
5 that led to actually you stating, okay, then no carve-
6 outs?

7 A I'll assume for the moment, based on your
8 question, that I was the one that brought up the phrase
9 carve-outs. But regardless, what I do remember about
10 the discussion about release was that I think it was
11 Mr. Earley who was pushing for the notion -- maybe Mr.
12 Kayser or you. I don't remember who it was. I think
13 it was Mr. Earley, was saying we need full releases,
14 referring to these other agreements that were in place,
15 because you didn't want to be -- you didn't want
16 Tagnetics to be able to sue on any -- on any
17 intellectual property rights, anything related to the
18 employment agreement. You wanted complete freedom from
19 Tagnetics, and I had expressed some concern about that
20 at some point, so I said nevertheless, I'm duty-bound
21 to discuss this with my client, and I will do so.

22 I did bring it up with Tagnetics, and I did
23 report back, to my surprise, that Tagnetics did -- was
24 willing to agree to the full releases you requested,
25 provided it was mutual, meaning no carve-outs, full

TAGNETICS (19-30822) 10-18-19

70

1 mutual releases, and that's my general recollection of
2 how that conversation occurred.

3 MR. HAGER: I don't know if I can clarify
4 that conversation now, or do I need to do it later?

5 THE COURT: I mean, do you want to ask Mr.
6 Stern any more questions about that conversation or are
7 you saying you want to testify as to your recollection
8 of that conversation?

9 MR. HAGER: I guess I could ask a question,
10 maybe get the same --

11 THE COURT: You can ask him more questions.

12 BY MR. HAGER:

13 Q Did you request that Tagnetics reserve the right
14 to have essentially a carve-out, or to reserve the
15 right to be able to come back and sue the Petitioning
16 Creditors in that phone call?

17 A Well, one of the things I did explain -- I
18 understand now -- I think I know what you're talking
19 about. At one point, when I expressed my initial
20 concern about giving the full mutual release to you and
21 Mr. Earley and Mr. Kayser, was that since there was
22 reference to some intellectual property issues, maybe
23 theft of trade secrets -- I may have probably given as
24 an example -- that's one I often use as an example, I
25 said I don't know if I could recommend that Tagnetics

TAGNETICS (19-30822) 10-18-19

71

1 agree to this, because I don't know what you guys have
2 taken or not taken.

3 So I said, I will nevertheless discuss it with
4 the client, but the client was willing to agree to
5 that, again, provided that it's mutual and there were
6 no carve-outs, which is what you were asking for
7 yourselves and I remember then saying it's going to be
8 mutual, and it will be all the way around, for all
9 parties involved.

10 Q So was this specific discussion that you wanted
11 to -- you requested the reservation of Tagnetics to be
12 able to come back and prosecute us, if you will, at
13 some later date, and we disagreed with that --

14 A Right, and then I eventually said --

15 Q -- request specifically?

16 A And then I eventually said that there is no
17 reservation, it's full mutual releases, no carve-outs,
18 so meaning you got the release you wanted.

19 Q But in the context of that discussion, to the
20 point of carve-outs in context, as you alluded is
21 proper, were we discussing our disagreement with
22 Tagnetics, reserving the right to come back and
23 prosecute us about our employment agreements,
24 participation in the Board, all the same points that
25 had been raised in the original July 20th proposal?

TAGNETICS (19-30822) 10-18-19

72

1 A I don't know if it was in the context of the
2 July 20th proposal. That I don't -- I don't recall
3 that being the case. But again, you did express some
4 concerns, that is correct, about what Tagnetics may
5 come back after you on, and I had some concerns about
6 that. Nevertheless, I reported back to Tagnetics, had
7 a conversation with Tagnetics about it. Tagnetics
8 ultimately agreed to the concession you wanted
9 Tagnetics to make, which was the full release of the
10 three of you, and in return there would be a full
11 mutual release of Tagnetics, as well, which is what is
12 on that term sheet on July 26th, as exactly as we
13 discussed. That phrase is something that we discussed
14 and made sure that that was part of the discussion. It
15 wasn't just one-sided. It was both.

16 Q The other question I guess I have for you is in
17 your final emails on the 26th, as we call the flurry of
18 emails trying to get to the deadline, which would have
19 postponed the trial, did you label any of those emails
20 as this is a term sheet?

21 A No, I did not. I just --

22 Q You have been referring to it as a term sheet,
23 which I understand -- my experience with term sheets
24 and raising funds years ago for Tagnetics was, you
25 know, it's specifically calling everything out, but in

TAGNETICS (19-30822) 10-18-19

73

1 those emails you refer to them as key terms.

2 A Yes.

3 Q Which would key terms allude to the fact that
4 that's a portion of the agreement? There are key terms
5 to an agreement and there are other terms to an
6 agreement?

7 A Well, there are material terms and there are
8 other terms, as written in the draft settlement
9 agreement, that as far as I could tell, there weren't
10 any objections to, for example, some of the other terms
11 in the settlement agreement. The Section 18 about
12 waiver, Section 17 about prevailing party status. Now,
13 that was in the July 26th email, but those are pretty
14 common types of terms in settlement agreements that
15 I've entered into. And as I referred to in the email
16 on the 27th, saying that these are the key terms, but I
17 said we have an agreement in place that will be
18 documented more thoroughly in a settlement agreement.
19 Referring to that they will be more elaborated on in a
20 written agreement, which is what I provided to the
21 three of you on August 17th. I'm bad with dates, so I
22 have to think about that.

23 Q So going back to your response to the July 20th
24 proposal, you responded July 23rd. Did you
25 specifically address or specifically state that the

TAGNETICS (19-30822) 10-18-19

74

1 items listed as other items needing to be in the
2 settlement, did you specifically say those were
3 rejected?

4 A I'm sorry, can you ask the question again?

5 Q Sorry, trying to read my notes on the fly here.
6 So when you responded to Mr. Kayser's proposal of the
7 20th, did you specifically reject any of the terms
8 below, any of our requested terms that were below the
9 cash payment schedule at the top? Did you specifically
10 say those other items are no longer being considered,
11 or are not to be considered?

12 A I think the -- what I did write was your demand
13 put forward is not realistic.

14 Q Which is that -- that's a fairly general
15 statement, right?

16 A It is, but it refers to the entirety of the
17 demand.

18 Q But it would beg the next statement to be
19 clarification of what you disagree with, correct?

20 A Well, I disagreed with the entirety of the
21 demand.

22 Q I mean, if I said the weather was terrible
23 outside, you'd say well, what's terrible about it?
24 Right?

25 A Not necessarily.

TAGNETICS (19-30822) 10-18-19

75

1 Q So, yeah, so I can't testify, so I can't go much
2 further. But so did you specifically talk about in
3 Paragraph 2 the shortness of funds or the lack of
4 funds, if you will, of Tagnetics, at this point in
5 time, being able to make a payment at this point in
6 time?

7 A That's one of the things I discussed, but I also
8 discussed the concept of the default judgment that was
9 being discussed, which is not a monetary term. So it
10 wasn't limited only to the money that -- we were not
11 discussing only money in that email.

12 Q But was there any reference to the KBL Core
13 agreement, the loan for Mr. Earley or --

14 A No.

15 Q So nothing for us to believe that you had
16 rejected those items that were being proposed on the
17 July 20 --

18 A Well, I don't know how else to interpret "The
19 demand you put forth is not realistic." That's
20 rejection of the term. Now, furthermore, your response
21 -- in fact, it was Mr. Earley, "Here's our offer, after
22 your email this morning. Let us know if there's any
23 interest." It doesn't refer to any other terms. And
24 then after that the next email I got was -- or another
25 email where, again, there was no monetary terms

TAGNETICS (19-30822) 10-18-19

76

1 involved, but it was from Mr. Earley, on July 25th at
2 1:25 p.m., it says, "Here is my counter proposal." And
3 no other terms other than monetary terms in there.
4 What other non-monetary terms am I supposed to be
5 interpreting into that counter proposal on July 25th?
6 I don't know. There's no incorporation to the July
7 20th email, no reference made to terms in the July 20th
8 email, and there were two or three counter -- two
9 counter proposals, if I'm doing my math correctly, that
10 didn't refer to any other non-monetary terms between
11 now -- the July 20th -- and at least I'm looking at
12 July 25th. And again, the -- not once, not twice, but
13 three times in the confirmation emails on July 26th,
14 there were no other non-monetary terms included in the
15 emails from any of you.

16 In fact, the email from you on -- at 4:36,
17 Exhibit I, just to make sure there's no confusion.
18 Now, granted, that's the payment schedule, but if there
19 is some other non-monetary terms that I'm supposed to
20 be considering, I didn't see that in any of those three
21 emails.

22 Q I just want to point out on that schedule, I was
23 correcting a typo, so on one of the charts that was
24 sent under my name, the first item was 300.

25 A I saw that. But you also added --

TAGNETICS (19-30822) 10-18-19

77

1 Q There were three zeros, so I went ahead and just
2 --

3 A I saw it, but you also added "total" in
4 capitals. I mean --

5 Q I do spreadsheets every day and so I always do
6 "total" in capitals so I can see it. I didn't want to
7 read a lot into that total, but that's beside the
8 point. Did you get an email from me on July 30th?

9 A I don't know.

10 Q It's in our Exhibit 5, which I can pull out.

11 A I don't know --

12 MR. KRACHT: Objection.

13 MR. STERN: -- if it was sent to me.

14 MR. KRACHT: It's outside the scope. It's
15 outside the scope, Your Honor.

16 THE COURT: Any response to the objection,
17 Mr. Hager? Basically what he's saying is your question
18 is outside the scope of his -- what he testified to on
19 direct examination. It's beyond what he testified to
20 on --

21 MR. HAGER: I guess I'm trying to make the
22 point that in his statements earlier he said that we
23 were making new claims, that we had buyer's remorse, if
24 I remember your phrasing, and we were introducing new
25 monetary demands at that later date. Is that correct,

TAGNETICS (19-30822) 10-18-19

78

1 you said --

2 MR. STERN: Yes, as just what I testified to,
3 I would say that's a fair description.

4 MR. HAGER: And so I was trying to make the
5 point that on that Tuesday, which was the day after the
6 weekend that we were expecting to see some kind of
7 draft agreement --

8 THE COURT: Not -- we're kind of getting into
9 testimony.

10 MR. HAGER: I'm sorry. I can cover that
11 later.

12 THE COURT: Now, if you have that -- if you
13 have that exhibit and you want to present it to Mr.
14 Stern and ask him if he received that, you may do that.
15 That's certainly, I think, well within the scope of
16 cross-examination, if it relates to his direct
17 testimony. So to that extent, I'm going to overrule
18 your objection, Mr. Kracht.

19 MR. HAGER: I apologize for muddling through
20 this. I'll do my best.

21 BY MR. HAGER:

22 Q So this is the email that was sent on -- let's
23 see if I can show this -- Tuesday, July 30th, at 9:33
24 a.m.

25 A Can you just do me a favor and put the entirety

TAGNETICS (19-30822) 10-18-19

79

1 of that first page on, so I can see the full string?

2 Like, does this --

3 Q Well, the header, this is just wrapped on to
4 another page. So that was the table on this as a
5 follow-up.

6 THE COURT: Do you have a hard copy you can
7 present to --

8 MR. KRACHT: And what exhibit is this?

9 MR. HAGER: This is part of our Exhibit 5.

10 THE COURT: Does somebody have a hard copy
11 for the witness?

12 MR. HAGER: Is this for you, Your Honor?

13 THE COURT: We will need copies of any
14 exhibits you seek to introduce.

15 BY MR. HAGER:

16 Q This is still a part of that thick Exhibit 5,
17 which was all the emails.

18 THE COURT: Okay. Mr. Kracht, do you have
19 that?

20 MR. KRACHT: Exhibit 5, correct?

21 THE COURT: Yeah. I just want to make sure
22 you have that.

23 MR. KRACHT: I don't believe there are
24 exhibit stickers, but they appear to -- did you
25 identify your exhibits like at the top of a document?

TAGNETICS (19-30822) 10-18-19

80

1 MR. HAGER: Yes, at the first page it was
2 identified, yes. So it follows the last table here.
3 July 30th --

4 MR. KRACHT: This is still part of Exhibit 5?

5 THE COURT: If you have the files, the
6 exhibit -- proposed exhibits they filed in Document
7 112-5, it would be 112-5, Page 1 of 24.

8 MR. KRACHT: For some reason, Your Honor, I
9 don't have that in what I printed from what they filed
10 electronically. I've got 3, 4 and I'm not running into
11 that page of Exhibit 5 for some reason.

12 THE COURT: What page of Exhibit 5 is that
13 you have on the document camera, Mr. Hager?

14 MR. HAGER: Looks like Page 16 in this copy.

15 MR. KRACHT: I'm going off of, Your Honor,
16 the exhibits that are time stamped, based on what they
17 filed with the Court. And what -- he's referring to a
18 document that has no court filing marks of any sort, so
19 I think there's some problem, unless I missed it, and I
20 apologize, if I did.

21 MR. HAGER: Right here, this is where it
22 starts. It's this, understood from Joni Behnken's
23 email and then, unfortunately, your printout, you ran
24 out of ink. That's the discussion. I'll try to make
25 it quick.

TAGNETICS (19-30822) 10-18-19

81

1 MR. KRACHT: Looks like we have it but
2 there's some copying issues from what we got off the
3 Court file.

4 THE COURT: Yeah, I'm not sure -- Mr. Hager,
5 I'm not sure when you filed these or whoever filed
6 these with the Court, that in the process, that it all
7 got copied and into the system.

8 MR. HAGER: He has the document. It's just
9 the printout is faded.

10 MR. KRACHT: You can't read it.

11 MR. HAGER: Ran out of ink or something.

12 MR. KRACHT: I don't think it's on our end.
13 I think it's -- I mean, I guess we could look at what
14 the Court shows as well, but the document he's
15 referring to, the text on the next page after that is
16 virtually illegible for several pages actually.

17 THE COURT: Yeah. I think there was a
18 problem --

19 MR. KRACHT: How it was scanned when it was
20 fed in.

21 THE COURT: Yeah, because what I'm looking at
22 in the court file exhibits does look significantly
23 different from what's on the monitor.

24 MR. HAGER: Can I approach, Your Honor, just
25 show you what we have?

TAGNETICS (19-30822) 10-18-19

82

1 THE COURT: Absolutely, yeah.

2 THE CLERK: It is listed under 6, but it is
3 not legible. It appears to be a scanning issue. Your
4 Honor, if we took a recess I could probably retrieve it
5 from the Clerk's office.

6 THE COURT: Yeah, why don't we take a short
7 recess to do that? The Court is going to take a short
8 recess to retrieve the document from the Clerk's
9 office.

10 THE CLERK: Court is in recess.

11 (Off the record from 11:50 a.m. until 12:06
12 p.m.)

13 THE CLERK: Court is again in session. You
14 may be seated.

15 THE COURT: Okay. We left off with Mr. Hager
16 trying to cross-examine Mr. Stern on what was part of -
17 - an email that was part of, I believe, the Petitioning
18 Creditors' Exhibit 5, and there was I think a scanning
19 problem or issue with the Petitioning Creditors'
20 exhibits at the Court, but I believe, Mr. Kracht, that
21 they did email these exhibits to you; is that correct?

22 MR. KRACHT: I wasn't able to confirm that,
23 Your Honor, and it's very possible that that occurred.
24 I don't want to say that they weren't.

25 MR. HAGER: We did.

TAGNETICS (19-30822) 10-18-19

83

1 THE COURT: Okay. Mr. Hager says they were
2 emailed to you. Is there any objection at this point
3 as to Mr. Hager's examining Mr. Stern on that -- was
4 that a July 30th? Is that right?

5 MR. HAGER: That's correct.

6 THE COURT: Email?

7 MR. KRACHT: I have that right now. And no.

8 THE COURT: All right. You may proceed, Mr.
9 Hager. Thank you.

10 BY MR. HAGER:

11 Q So this email here, I want to know if you had
12 received it on July 30th?

13 A I have no specific recollection that I did, but
14 I have no basis of saying that I did not.

15 Q So then whether you can answer or not, whether
16 you read the attachment that was attached to that
17 email?

18 A I have no recollection one way or the other.
19 I'm not saying that it wasn't sent to me. I don't
20 specifically recall doing it.

21 Q Can you see in this attachment the --

22 A You have to pull it up a little bit for me to
23 see the entirety of it. Now I can.

24 Q There you go. And that's -- there's a whole
25 other page, but anyway, as it's written here -- I guess

TAGNETICS (19-30822) 10-18-19

84

1 I can put the whole thing -- basically this attachment
2 looked very similar to the original proposal on July
3 20th.

4 A I don't know. I'd have to do a comparison, but
5 in my mind, even if it did, it doesn't matter, because
6 that wasn't part of what we agreed to on July 26th. I
7 remember -- what I do remember, after we reached
8 agreement on the 26th, there were some emails back and
9 forth, and admittedly, I didn't pay close attention. I
10 had just gotten back from vacation. I'm trying to get
11 up to speed. We had the agreement in place. My sole
12 focus was to comply with the Court's directive to get
13 the agreed order in place, and then work on the
14 settlement agreement afterwards.

15 So I remember there's some emails that I
16 received from one or some combination of you guys, but
17 I have no recollection of what the specifics were and I
18 didn't -- I remember, whatever I saw, I didn't really
19 pay close attention to.

20 Q Okay. So you don't think you read this email
21 then?

22 A I may have, but if I did I didn't really process
23 it. I would say I may have taken a quick skim through,
24 but it wasn't something I was planning on paying
25 attention to, reading carefully or paying close

TAGNETICS (19-30822) 10-18-19

85

1 attention to. We had the agreement in place. I was
2 worried about the agreed order, as far as this case was
3 concerned. That was my focus, that I remember being
4 the case.

5 Q So when you received our concerns about the
6 draft agreement, did you say that we had added new
7 terms?

8 A I remember having those discussions or that, you
9 know, exchange, after I sent the draft agreement. I
10 have no recollection of doing that beforehand.

11 Q But in your testimony didn't you say we had
12 added new terms, things that were never discussed?

13 A Yes, and even based on that email there,
14 assuming that's what was sent, I would still say those
15 are new terms from what we discussed, because the
16 agreement on the 26th didn't reflect those terms. And
17 as you may recall from the email strings at one point,
18 you cut off or it wasn't you specifically, Mr. Earley
19 said, cut off discussions, saying no chance, see you in
20 court. Then I asked for a counter proposal and, again,
21 there were counter proposals, but no reference to any
22 of these other terms.

23 MR. HAGER: So -- I don't think I can say
24 that. I guess I'll cover that in my -- in our
25 examination later or witness testimony. Okay. I have

TAGNETICS (19-30822) 10-18-19

86

1 nothing further right now.

2 THE COURT: Thank you, Mr. Hager. Any
3 redirect examination, Mr. Kracht? You may proceed.

4 REDIRECT EXAMINATION OF STEPHEN STERN

5 BY MR. KRACHT:

6 Q Directing your attention to Tagnetics Exhibit A,
7 Page 3.

8 A Mm-hmm.

9 Q It's the email at the bottom of that page from
10 Mr. Earley to you, dated July 24th at 7:43; is that
11 what you were referring to, where they cut off all
12 discussions, terminated any discussions?

13 A Yes, that's what I interpreted their response to
14 be. And, in fact, if you look at my email above that,
15 my email on the 25th at 12:42 p.m., it's exactly the
16 phrasing I used. It seems silly, and quite frankly
17 odd, to simply cut off negotiations. I thought we were
18 done. Whatever transpired is over, and I'm trying to
19 revive discussions at that point, asking for a
20 counteroffer.

21 Q And you're starting anew from that point?

22 A That's the way I thought.

23 MR. KRACHT: Okay. Nothing further.

24 THE COURT: Thank you, Mr. Kracht. Any
25 recross-examination of Mr. Stern, Mr. Kayser?

TAGNETICS (19-30822) 10-18-19

87

1 DR. KAYSER: No.

2 THE COURT: Mr. Earley?

3 MR. EARLEY: No.

4 THE COURT: Mr. Hager?

5 MR. HAGER: No.

6 THE COURT: Okay. I've got a couple quick
7 questions, Mr. Stern, and then everybody is willing to
8 ask any additional questions based upon my questions.
9 There are just two questions. One, the payment
10 schedule refers to a liquidity event. What would you -
11 - what's your understanding as to what liquidity event
12 means?

13 MR. STERN: We never discussed those details.
14 So when I put together the draft agreement, Your Honor,
15 there is a provision in the agreement, Section 2 on
16 Page 2 of Exhibit B, that -- where I provided a
17 definition of a liquidity event. And my recollection
18 from the objections and concerns that I received from
19 the alleged Creditors, no one really objected to that
20 definition that I included. It is a similar definition
21 -- I've written many agreements in my career. This
22 doesn't come directly from another one, but it adopts
23 concepts that I've used before in other agreements, and
24 I wanted to make it as, you know, consistent with what
25 we were -- you know thinking of as what would be a

TAGNETICS (19-30822) 10-18-19

88

1 liquidity event and what would be an accurate and fair
2 description of that, and I think that's captured in
3 Section 2.

4 THE COURT: Okay, thank you. Well, that
5 answers that question for me. I'm assuming then from
6 what you just testified, that your definition of
7 liquidity event, what was intended, in your
8 understanding of liquidity event, in that schedule, was
9 what you have in Paragraph 2 of your draft settlement
10 agreement?

11 MR. STERN: Yes. This is what I wanted to
12 use as the definition, and I think it fairly and
13 accurately describes the types of liquidity events that
14 would be potentially in play for Tagnetics. And so to
15 -- I remember that was one of the conditions that they
16 wanted, they being the alleged Creditors, wanted for
17 the -- on the payment schedule for a certain event to
18 occur. And I tried to -- my best to capture what the
19 concept was. Granted, there were no details -- to be
20 fair, there were no details that were discussed between
21 us as to what would constitute a liquidity event. It
22 was just a phrase that was used, and I tried to put
23 reasonable meat on the bones to fairly and accurately
24 describe what that might be, to capture that event, if
25 it were to occur.

TAGNETICS (19-30822) 10-18-19

89

1 THE COURT: Thank you. The second question
2 or area is some or all of the Petitioning Creditors, I
3 understand, I believe still have stock or equity
4 interest in Tagnetics. From the July 26, if there was
5 a July 26th settlement, what's your position as to the
6 impact of that settlement agreement on the stock or
7 equity interest?

8 MR. STERN: That is a fair question that I
9 don't think is really captured in the agreement. The -
10 - we didn't ask for them to relinquish their stock
11 certificates, because that wasn't part of the
12 discussion, but it was to relinquish any rights that
13 the release does capture, the relinquishment of any
14 rights they might have had vis-a-vis those -- whether
15 it be payment of profits, dividends or anything prior
16 to that date, I think is certainly captured in the
17 essence of full mutual releases, no carve-outs. But in
18 terms of what they had to do with their stock
19 certificates was not covered.

20 THE COURT: Thank you. Those are the only
21 questions the Court had for Mr. Stern. Any questions
22 based upon my questions, Mr. Kracht, for Mr. Stern?

23 MR. KRACHT: No, Your Honor.

24 THE COURT: Okay.

25 MR. STERN: May I step down, Your Honor?

TAGNETICS (19-30822) 10-18-19

90

1 THE COURT: Hold on. Mr. Kayser, any
2 questions for Mr. Stern, based upon the questions I
3 just asked?

4 DR. KAYSER: No.

5 THE COURT: No? Mr. Earley?

6 MR. EARLEY: No.

7 THE COURT: Mr. Hager?

8 MR. HAGER: No, sir.

9 THE COURT: Thank you. Mr. Stern, you may be
10 excused.

11 MR. STERN: Thank you. It's been interesting
12 sitting on this side of the microphone.

13 THE COURT: It is different. I have been --
14 was there as an attorney years ago, and I agree, it is
15 a much different experience being on the other side.

16 Okay. Mr. Kracht or Mr. Stern, any other
17 witnesses you wish to call in Tagnetics' case?

18 MR. KRACHT: No, Your Honor.

19 THE COURT: Any other evidence then you wish
20 to introduce? We've admitted all your exhibits except
21 E. We've got Mr. Stern's testimony. Any other
22 evidence you wish to introduce?

23 MR. KRACHT: Nothing further, Your Honor.

24 THE COURT: Okay, thank you. What time is
25 it?

TAGNETICS (19-30822) 10-18-19

91

1 THE CLERK: It's 12:17, Your Honor.

2 THE COURT: 12:17. I think we -- now would
3 probably be a good time to break for lunch. As my wife
4 would let all of you know, it's in your all best
5 interest to let the Court take a lunch break. Whoever
6 came up with that Snickers' commercial with the prima
7 donnas in the Snickers' commercial, I think must have
8 known me. At least my wife would say they knew me. So
9 I hopefully will be much better behaved after getting
10 some nourishment and taking a short break for that. So
11 why don't we do that now. But I'll leave it up to you
12 how long you think we -- you wish, because I know all
13 of you probably have flights and so forth you need to
14 catch, so the -- taking a lunch break is not
15 negotiable, but the length of the lunch break is
16 negotiable.

17 MR. STERN: Your Honor, to the point about
18 leaving, I booked my flight as late as possible today.
19 It's out of Cincinnati. The latest I could fly out of
20 Dayton was like 2:30, and I thought that might be a
21 problem, but I probably have to be on the road back to
22 Cincinnati -- I realize we do have to get through this
23 hearing, probably by about 3:00, to catch my flight, to
24 make sure I return the car on time and everything.

25 THE COURT: Okay.

TAGNETICS (19-30822) 10-18-19

92

1 MR. STERN: I think we should be able to
2 finish in that time, but I want the Court to be aware,
3 so we can plan accordingly.

4 THE COURT: Yeah.

5 DR. KAYSER: Excuse me. What time is your
6 flight out of Cincinnati?

7 MR. STERN: 5:20. And it's about an hour and
8 15 minutes --

9 DR. KAYSER: We'll do our best to be brief.

10 THE COURT: Okay.

11 MR. STERN: I don't know how much time you
12 guys were going to use, but --

13 DR. KAYSER: I think we'll be brief.

14 MR. STERN: So we should be on track then.

15 THE COURT: Why don't we plan on being here
16 back in 30 minutes? We can for sure getting started by
17 one o'clock, and then Ms. Behnken can -- and court
18 personnel can guide you to different places you can go.
19 Thank you.

20 THE CLERK: All rise.

21 (Lunch break from 12:20 p.m. until 1:03 p.m.)

22 THE CLERK: Court is again in session. You
23 may be seated.

24 THE COURT: Okay. Before we took an
25 adjournment for lunch, Tagnetics rested its case and we

TAGNETICS (19-30822) 10-18-19

93

1 are now, I believe, prepared for the Petitioning
2 Creditors' cases. Mr. Kayser, or do one of you -- it
3 doesn't have to be Mr. Kayser. Who wishes to proceed
4 with their case first?

5 DR. KAYSER: Your Honor, I will take the
6 witness stand and present a narrative.

7 THE COURT: You may do so.

8 THE CLERK: I just remind you, sir, you're
9 still under oath.

10 DR. KAYSER: Understood.

11 DIRECT TESTIMONY OF KENNETH KAYSER

12 DR. KAYSER: Let me start at the beginning, a
13 brief introduction of who I am. I got my Ph.D. from
14 Purdue University in 1973. I was -- after that became
15 an assistant professor at Purdue, Director of the
16 Center for Applied Stochastics and a Professor in the
17 Department of Aeronautics and Astronautics

18 I also was the founder of Tagnetics'
19 predecessor 20-some years ago. I was the name on the
20 patents for the technology. And ultimately that
21 company was sold to Hobart and then re-acquired and
22 went forward under another name, was reorganized one
23 other time, to become Tagnetics. Ron Earley was the
24 president of that company. I was the chairman and I
25 have been a director of this company throughout the

TAGNETICS (19-30822) 10-18-19

94

1 history of the company.

2 As of the beginning of this year, I resigned
3 as a director, with the express statement that we would
4 take legal action against the company, if the issues
5 concerning our contracts, among other issues with
6 creditors, were not resolved quickly.

7 Three months later we filed the petition, and
8 that's how we got to where we are today.

9 On July 19th we received a request from Mr.
10 Stern to make a proposal to settle this. The three of
11 us sat down or by phone conference agreed on what the
12 terms of that settlement proposal should be, and that's
13 expressed in my July 20th email. We agreed going into
14 this those were our terms.

15 A couple days after I sent that email, we got
16 a response from Mr. Stern, which has been introduced
17 into evidence previously, requesting a change in the
18 payout schedule, but not disputing the total amount we
19 agreed to settle for, which was, incidentally,
20 approximately 40 percent, which we thought was
21 contractually due to us.

22 I wasn't particularly in favor of doing a
23 settlement at all, given my history of asking for a
24 settlement previously, but I agreed to go along with
25 the other two petitioners, as they had been long-time

TAGNETICS (19-30822) 10-18-19

95

1 employees of our company, and I wanted us all to be
2 more or less on the same page.

3 The terms of that July 20th letter, as far as
4 we knew, were never disputed except for the time table
5 on the payment of the funds. I was not involved in the
6 negotiation, because I had agreed that I would -- it
7 would be up to the other two guys to determine what
8 that payout was to us.

9 When we first got the request to renegotiate
10 the payout terms, the three of us once again had a
11 conference call to agree and what we agreed to do was
12 allow Ron Earley to renegotiate the terms of that
13 payout. We also agreed that the other terms were in
14 inviolate. And we did not authorize Ron -- Mr. Earley,
15 nor did we expect there to be any renegotiation of
16 those terms.

17 We talked often over the next several days,
18 during the craziness of many conversations back and
19 forth concerning the amount. In general, I didn't have
20 any significant input into that, other than to stress
21 in every conversation that the terms and conditions,
22 which we had outlined on July 20th, must be included in
23 any settlement agreement.

24 On Friday, a few hours before I guess around
25 3:00 or 3:30, I did hear that they had reached an

TAGNETICS (19-30822) 10-18-19

96

1 agreement on the payout schedule, and both Ron Earley
2 and Jon Hager confirmed to me that they had not
3 renegotiated any other term, nor were they brought up.
4 And when Joni called me at 5:30 that evening, or not
5 evening, five o'clock -- I'm not sure of the exact time
6 Joni called, but it was later than I expected her to be
7 here, I told her that I had agreed to go along with
8 whatever Mr. Earley and Mr. Hager had agreed to. She
9 told me that they had both sent a note to the Court. I
10 don't recall exactly how that was sent.

11 So I agreed to go ahead and cancel the trial
12 at that time, given the assurances I had received from
13 both Mr. Earley and Mr. Hager that the terms had not
14 been discussed, and had not been agreed to, any changes
15 in those terms and conditions.

16 When I finally got a chance to read the email
17 that Mr. Stern had sent to me at 3:30 on Friday -- I
18 had been out doing some things. I don't even recall
19 what errands I was running, but I wasn't able to see
20 the email until 5:30. It said two things of
21 significance to me.

22 One is it had this vague term of carve-outs.
23 Carve-out is a word, when I -- I wasn't very happy with
24 what I got back from him. Being a lawyer, I expected
25 there to be more clarity in what he sent back, rather

TAGNETICS (19-30822) 10-18-19

97

1 than less. I Googled carve-out, looking for the
2 definition of carve-out, because I wanted to understand
3 what he was trying to say. And basically there is no
4 specific definition of carve-out. It's entirely a
5 definition due to context.

6 And while from our perspective, all three of
7 us and mine, our perspective was that we were
8 negotiating from the July 20th document. And I
9 understood why both Mr. Hager and Mr. Earley would have
10 interpreted no carve-outs as meaning no changes to our
11 provision, other than the payment schedule, which was
12 being negotiated.

13 However, in that 3:30 email on Friday from
14 Mr. Stern, he also committed to getting a draft of the
15 settlement agreement over the weekend done. When we
16 did not receive that settlement agreement on Monday,
17 the three of us had another conference call, and said,
18 you know, there's been no clear restatement of the
19 terms of the settlement we had agreed to.

20 As a result of receiving no communication
21 from Mr. Stern on Monday, the three of us selected Jon
22 Hager to write a response, reiterating the terms which
23 we had agreed to. That was sent on Tuesday. I don't
24 know the date.

25 The Judge, Your Honor, you had ordered that

TAGNETICS (19-30822) 10-18-19

98

1 there be, I believe, two weeks from the Friday for us
2 to get an agreed order. We did not hear from Mr.
3 Stern. We saw an agreed order, which he said we had to
4 sign. We didn't believe we had a clear agreement. We
5 refused to sign that agreement. We later received the
6 draft agreement, which he had sent, which we didn't
7 agree to and we didn't -- we never signed an agreed
8 order, because we did not have an agreement.

9 We consequently had another conference call
10 with Your Honor, and -- excuse me for a second. I have
11 to think about the time line. I'm old. I can't see
12 well and I don't hear well, so it takes me a while to
13 look at this stuff.

14 We had another conference call with you to
15 discuss -- during which you set a new deadline for when
16 we needed to have the agreement put together by. We
17 did not have the agreement together by then, and there
18 was no negotiation. There were very large gaps which,
19 frankly, I can't testify to. I'm sure that Mr. Hager
20 will testify to the time line of the gaps, when we
21 never heard -- we repeatedly reiterated the terms and
22 conditions under which we were willing to settle. We
23 never saw any edit to the draft agreement concerning --
24 we had no conversation with working out our
25 differences.

TAGNETICS (19-30822) 10-18-19

99

1 I have negotiated many contracts in my life.
2 I've always been chairman of the board of companies or
3 an executive of companies, and I'm used to doing
4 negotiated settlements, and this did not follow the
5 normal course, in which if you had a disagreement, you
6 discuss it.

7 Because of that, when we were approaching the
8 date where for a ruling on the motion to enforce
9 settlement, I had my business attorney in Roanoke,
10 Virginia do a redline version of the draft agreement,
11 and I gave him two documents, the money -- the money
12 timetable and the original July 20th letter, and I
13 asked him to redline this agreement, based on those two
14 documents, without giving him any further guidelines on
15 what to do. And that's the redline version I presented
16 to you.

17 That document reflects our -- what we thought
18 we agreed to on Friday, when we agreed to postpone the
19 trial. There's also a clean version that was
20 presented. And as of this date, even though part of
21 our verbal agreement was that it would be done quickly,
22 and it's now been three months, we will still go along
23 with what we agreed to as expressed by those documents.

24 I do not believe that there has been any real
25 interest in settling this, and that this has simply

TAGNETICS (19-30822) 10-18-19

100

1 been an effective way to further delay the trial. And
2 I look forward to the Court setting a trial date, so it
3 has a chance to review the evidence as to the
4 insolvency of Tagnetics.

5 THE COURT: Okay, hold on, Mr. Kayser. Are
6 there exhibits which haven't already been introduced,
7 which you wish to introduce in your case?

8 DR. KAYSER: I'm sorry, Your Honor. I
9 couldn't understand. Are there exhibits?

10 THE COURT: Are there exhibits which haven't
11 already been introduced?

12 DR. KAYSER: All the exhibits I'm quoting
13 have already been -- already come into evidence.

14 THE COURT: Okay, okay. All right. Okay,
15 now, stay up there because they have the right to
16 cross-examine you. I assume you're done with your
17 direct examination.

18 MR. EARLEY: Your Honor, I guess to follow up
19 on that question, the exhibits that he mentioned were
20 ones that were submitted to the Court, but do they need
21 to be introduced right now?

22 THE COURT: Yes, they need to be introduced.

23 MR. EARLEY: So 4 -- did you take them up
24 there with you?

25 DR. KAYSER: Yes.

TAGNETICS (19-30822) 10-18-19

101

1 MR. EARLEY: Exhibit 3 and Exhibit 4.

2 DR. KAYSER: Thank you.

3 THE COURT: Now, this is kind of the awkward
4 part. I think we're in Mr. Kayser's case.

5 MR. EARLEY: Okay.

6 THE COURT: So if he wants those admitted,
7 he's going to have to --

8 DR. KAYSER: Your Honor, all of these -- the
9 two documents have been previously sent to the Court in
10 the response, but we would like to enter them into
11 evidence.

12 THE COURT: Can you provide them to Mr.
13 Kayser so he can identify them for the Court, while
14 he's on the witness stand?

15 DR. KAYSER: Yes, this is Exhibit 1. This is
16 --

17 THE COURT: Hold on. Slow down. Slow down.
18 What is Exhibit 1? Can you tell me --

19 DR. KAYSER: Exhibit 1 is my original email
20 from July 20th responding to the request for a
21 settlement offer.

22 THE COURT: Okay, now that I think has been
23 admitted as part of Exhibit A. Is that right?

24 MR. STERN: Yes, Exhibit A, yes.

25 THE COURT: So everybody good with just

TAGNETICS (19-30822) 10-18-19

102

1 having it admitted as part of Exhibit A?

2 MR. KRACHT: Yes.

3 THE COURT: Exhibit 2 is the modified payment
4 schedule, and that was part of an exhibit that has been
5 already submitted. I don't recall the exhibit number.

6 THE COURT: Is that part of Exhibit A or --

7 MR. KRACHT: I think that was I.

8 THE COURT: I?

9 MR. EARLEY: Yes, Exhibit I has that payment
10 schedule in it.

11 THE COURT: All right.

12 MR. STERN: Is Exhibit 2, if I'm
13 understanding correctly, it's labeled -- I've got
14 Exhibit 3. I'm sorry, the email. I'm getting
15 confused. Exhibit 2 is the email from Mr. Hager to me
16 on July 26th on his email -- his proposal, with total
17 settlement at 4:35. I think it was 4:36, on Exhibit I
18 for us.

19 MR. EARLEY: It is Exhibit I, yes.

20 MR. STERN: So that one is already admitted,
21 as well.

22 THE COURT: All right. We're in agreement
23 that that exhibit has been admitted as Tagnetics'
24 Exhibit I; is that right?

25 MR. EARLEY: So the next one --

TAGNETICS (19-30822) 10-18-19

103

1 DR. KAYSER: The next two exhibits haven't
2 been entered. That's Exhibit 3 and Exhibit 4, and
3 these -- Exhibit 3 is the redline of the draft
4 agreement that was sent to us by Mr. Stern, and Exhibit
5 4 is a clean version of that same contract.

6 THE COURT: Okay. And are you seeking
7 admission of those two documents?

8 MR. EARLEY: Yes.

9 THE COURT: Mr. Kayser?

10 DR. KAYSER: Say it again. I'm sorry, Your
11 Honor. I'm very hard of hearing.

12 THE COURT: Are you seeking admission --

13 DR. KAYSER: Yes.

14 THE COURT: -- of those two documents?

15 DR. KAYSER: Please.

16 MR. STERN: There's no email attached to
17 them, Your Honor, but we're willing to submit to the
18 admission of those exhibits, provided that there's an
19 acknowledgment that those were sent after July 26th.
20 If that's what the understanding is, then we will not
21 object to being admitted.

22 THE COURT: Are you in agreement those were
23 sent after July 26th?

24 DR. KAYSER: Oh, absolutely. These documents
25 were not done until a week before the hearing on the

TAGNETICS (19-30822) 10-18-19

104

1 motion.

2 THE COURT: Okay, all right. Then there's no
3 objections to admission -- those are labeled Exhibits 3
4 and 4?

5 DR. KAYSER: Correct.

6 THE COURT: To the admission of the
7 Petitioning Creditors' Exhibits 3 and 4?

8 MR. STERN: That's fine, as long as they
9 acknowledge when it was sent, we're fine with that,
10 Your Honor.

11 THE COURT: Okay. Then Exhibits -- the
12 Petitioning Creditors' Exhibits 3 and 4 are admitted.

13 (Petitioning Creditors' Exhibits 3 and 4
14 received into evidence.)

15 THE COURT: Is that it in terms of exhibits
16 that you wish to introduce, Mr. Kayser?

17 DR. KAYSER: Yes.

18 THE COURT: Okay. Now, I assume you're done
19 with your direct testimony?

20 DR. KAYSER: Correct.

21 THE COURT: All right. Do you wish to cross-
22 examine Mr. Kayser, Mr. Stern or Mr. Kracht?

23 MR. STERN: Yes, Your Honor.

24 THE COURT: You may do so.

25 MR. STERN: Thank you.

TAGNETICS (19-30822) 10-18-19

105

1 CROSS-EXAMINATION OF KENNETH KAYSER

2 BY MR. STERN:

3 Q Putting up what is referred to as July 20th
4 email, that's Exhibit A. It's been admitted into
5 evidence. This is the email you're referring to, Mr.
6 Kayser?

7 A Yes, and I need you to speak into the
8 microphone.

9 Q Sure, I'm sorry. Am I more audible now?

10 A Yeah, I'm just hard of hearing and I should have
11 gotten a hearing aid before I came to this court.

12 Q Now, this July 20th email is in a string of
13 emails, correct?

14 A Is in a what?

15 Q It's in a string of emails to and from you, Mr.
16 Earley, and Mr. Hager, between me and the three of you?

17 A There wasn't much of -- you know, I don't recall
18 whether we exchanged by email. I thought we mostly
19 discussed these terms, and I did send them -- send this
20 letter to them prior to sending it to you, to make sure
21 they agreed with the terms.

22 Q Now, in my email to the three of you on July
23 23rd, 2019, at 10:46 a.m., do you see in the second to
24 last paragraph, do you agree that I encouraged the
25 three of you to seek your own legal counsel? Is that

TAGNETICS (19-30822) 10-18-19

106

1 what it says right where I'm pointing to?

2 A Sure.

3 Q Okay. Then later on --

4 A I would encourage anyone to seek their own legal
5 counsel.

6 Q In that same email string, on an email from me
7 to the three of you, on July 24th at 5:56 p.m., which
8 is on Page 3 onto Page 4, I again -- I'm pointing to
9 where it says, "I encourage each of you to seek your
10 own legal advice." Did I do that again in that email
11 string?

12 A Absolutely. I can read when it's on the screen
13 that big.

14 Q Then again, on July 26th, early that day, the
15 day that we ultimately thought we reached an agreement,
16 I again suggested that you seek legal counsel; is that
17 correct?

18 A Yes, I do.

19 Q At any point did you authorize any legal counsel
20 to speak with me to negotiate a settlement?

21 A Did I at any date what?

22 Q Authorize any legal counsel to negotiate with me
23 to negotiate a settlement?

24 A No, I did not.

25 Q Now, earlier, if I understand your testimony

TAGNETICS (19-30822) 10-18-19

107

1 correctly, you said the terms of the July 20th, 2019
2 email were required to be included in any settlement
3 agreement that was reached with Tagnetics; is that
4 correct?

5 A That's correct.

6 Q Can you show me where that was communicated to
7 me at any point during the settlement negotiations?

8 A I cannot and I also cannot show you any email
9 where they were discussed, and we were always
10 negotiating from that document, the original document.

11 Q Can you explain where in the email string or
12 show me, I'm sorry, where in that email string that was
13 explained to me, that those terms of the July 20th
14 email were non-negotiable?

15 A If you look back at the July 20th one, look at
16 the wording above there, the agreement -- the
17 settlement agreement must include. We never rescinded
18 that declarative statement.

19 Q So can you show me where it says that -- this is
20 also your final offer, it says in there too, correct?
21 Is that what it says?

22 A The only thing Ron Earley was negotiating with
23 you was a payment schedule, because that's the only
24 thing you asked him to negotiate.

25 Q Can you show me where I asked to negotiate only

TAGNETICS (19-30822) 10-18-19

108

1 payment terms?

2 A That's reflected by your letter, where you have
3 several hundred words discussing the payment schedule
4 and the dire straits, which Tagnetics is in, so they
5 can't come up with paying their contracts, and there's
6 virtually -- I can't read it. Would you focus that
7 document if you want me to tell you what it says?

8 Q Oh, sorry.

9 THE CLERK: I'm not sure that it can focus
10 any more.

11 MR. STERN: Your Honor, if I may, to move
12 this along, could I refer to the exhibit binder, hand
13 that to the witness?

14 THE COURT: That's fine, yeah. That's fine.

15 MR. STERN: May I approach the witness, Your
16 Honor?

17 DR. KAYSER: I've got it.

18 THE COURT: Yes, you may.

19 DR. KAYSER: Which exhibit are you asking me
20 to --

21 BY MR. STERN:

22 Q So now, referring to Exhibit A, and if you could
23 refer to Page 5 of that exhibit, in the second
24 paragraph, am I referring to any non-monetary terms,
25 such as a default judgment?

TAGNETICS (19-30822) 10-18-19

109

1 A One again, you'll have to speak more clearly for
2 me to understand.

3 Q In the second paragraph of that email on July
4 23rd, on Page 5, am I referring to a non-monetary term,
5 referred to as a default judgment?

6 A Do I have a comment on that?

7 Q Is there a non-monetary term referenced in
8 there, referred to as a default judgment?

9 A I'll read it. "We can also include a default
10 judgment provision if provision is intended to
11 demonstrate in part that Tagnetics is serious about a
12 resolution and is not trying to jerk you around as
13 incorrectly you suspect it is."

14 Q Okay. So --

15 A That hardly sounds like clear language to me.

16 Q Okay.

17 A And you'll forget -- don't forget, I've been on
18 the Board of this company for years, and they have
19 failed to live up to the terms of the agreement, of our
20 employment agreement.

21 MR. STERN: Object, Your Honor, to the non-
22 responsive and strike his testimony.

23 THE COURT: Stop. If there's an objection,
24 you need to stop.

25 DR. KAYSER: I'm sorry.

TAGNETICS (19-30822) 10-18-19

110

1 THE COURT: I think Mr. Stern is objecting,
2 because that's not responsive to his question. So Mr.
3 Stern, if you want to ask your question again.

4 MR. STERN: Sure.

5 BY MR. STERN:

6 Q My question was whether or not there's any
7 reference in that paragraph to non-monetary term
8 referred to as a default judgment; is that yes or no?

9 A Not that I'm aware of.

10 Q Are you familiar with the term default judgment?

11 A I am not. I'm not an attorney.

12 Q Is there a phrase in Paragraph 2 on that July
13 23rd, 2019 email that says "default judgment?"

14 A Am I familiar with what that term -- you'll have
15 to ask the question in a clearer way for me.

16 Q Is there a phrase in Paragraph 2 on that email
17 referring to a default judgment?

18 A It says, "You can also include a default
19 judgment."

20 Q Now, in terms of non-monetary terms, the
21 ultimate agreement that was reflected in an email or a
22 purported agreement, since you're contesting it, on
23 July 26, 2019, there are non-monetary terms in that
24 email, aren't there? That's on Page 1 of the exhibit.

25 A You'll have to restate the question again.

TAGNETICS (19-30822) 10-18-19

111

1 Which paragraph do you want me to look at?

2 Q I'm looking at the email from me to you, Mr.
3 Earley and Mr. Hager, on July 26, 2019, at 3:27 p.m.,
4 which is on the first page of Exhibit A. Do you see
5 that?

6 A At 3:17 p.m.?

7 Q 3:27 p.m.

8 A Which page is that?

9 Q Page 1. Actually, I'll come back to that in a
10 moment. Why don't we turn to the email from Mr. Earley
11 to me on July 24, 2019, at 7:43 p.m. It's on Page 3 of
12 Exhibit A. See Mr. Earley's email, "Stephen, no
13 chance, look forward to meeting you on Monday." Do you
14 see that?

15 A Yes.

16 Q And then my response to that, the email above
17 that, where it says, "It seems silly and, quite frankly
18 odd, to simply cut off negotiations." Is my
19 characterization that Mr. Earley had cut off
20 negotiations an accurate description of where we were
21 at that point in time in our discussions?

22 A You made an insulting offer to settle a \$500,000
23 claim for \$5,000, didn't seem appropriate to us.

24 Q Is it an accurate description of the status of
25 the negotiations at that point in time that settlement

TAGNETICS (19-30822) 10-18-19

112

1 negotiations had been cut off?

2 A Yes.

3 Q Thank you. So then negotiations picked up again
4 in earnest on the 26th, and ultimately there's an email
5 from me to you, Mr. Earley, Mr. Hager, on July 26th at
6 3:27 p.m., that includes monetary and non-monetary
7 terms, doesn't it?

8 A It uses the word that's meant to be deceptive
9 and misleading, of carve-out.

10 Q We'll get to that in a moment.

11 A We were under the impression --

12 Q I asked -- my question was, Mr. Kayser --

13 A Okay. My answer is --

14 Q -- does that include monetary and non-monetary
15 terms?

16 A The only non-monetary thing I see in there is a
17 full mutual release, no carve-outs. And I thought that
18 was a very poor legal description of what we were
19 trying to agree on, and I believe it to this day. And
20 if you would prefer I have a lawyer say that's a lousy
21 way to describe something you're attempting to clarify,
22 great.

23 Q Are you familiar with the concept of what a full
24 mutual release is?

25 A The terms we had agreed to --

TAGNETICS (19-30822) 10-18-19

113

1 Q Are you familiar with the concept of what a full
2 mutual release is?

3 A Did we agree to a full mutual release? We
4 agreed to a release as defined by the terms of July
5 20th.

6 Q Are you familiar with the term full mutual
7 release means?

8 A It doesn't release you from fraud. It doesn't
9 release you from many things. And, no, I don't know
10 exactly what a full mutual release is, and we do not
11 agree with that language.

12 Q So then when Mr. Earley responded to that email
13 on July 26 at 3:56 p.m., it says, "Mr. Earley is
14 discussing this --" I'm sorry, Mr. Hager. "Mr. Earley
15 is discussing this with the Court at the moment. I'm
16 responding for Kayser, Earley and Hager, saying we
17 agree to the terms put forth as documented above." Was
18 Mr. Hager not speaking for you at that point in time?

19 A He did and, frankly, I was a little critical of
20 his response, but --

21 Q Did you reply to that email?

22 A No, I did not.

23 Q Advising me that he was not authorized to speak
24 for you?

25 A Mr. Stern, I never saw this email until 5:30

TAGNETICS (19-30822) 10-18-19

114

1 that evening.

2 Q Did you --

3 A When I saw it.

4 Q -- respond to me at 5:30 that evening saying
5 that Mr. Hager was not authorized to speak on your
6 behalf in response to the terms that I put out?

7 A I discussed this with Mr. Hager and I discussed
8 it with Mr. Earley. And Mr. Hager assured me that his
9 understanding was he had not agreed to taking the
10 provisions that outlined of the July 20th out. And I -
11 - we sat down and we had a discussion. And, frankly, I
12 viewed it as quite misleading and very poor language.
13 I expect the lawyers in this situation to clarify
14 things, not confuse them, and not attempt -- because we
15 weren't lawyers --

16 MR. STERN: Your Honor, this is again, not
17 responsive. I asked if this was communicated to me.

18 DR. KAYSER: Excuse me, Your Honor.

19 THE COURT: Sustained. Ask your question
20 again.

21 BY MR. STERN:

22 Q Did you communicate to me at any point on July
23 26th that Mr. Hager was not authorized to speak on your
24 behalf with respect to the terms of the July 26th email
25 at 3:27 p.m.?

TAGNETICS (19-30822) 10-18-19

115

1 A I did not. Mr. Hager was --

2 Q Did Mr. Hager at any point communicate to me on
3 July 26th, 2019, after my 3:27 p.m. email, that that
4 email did not accurately reflect the terms of the
5 agreement?

6 A Repeat your question.

7 Q Did Mr. Hager communicate to me --

8 A I wouldn't know. You'll have to ask Mr. Hager.

9 Q In the emails that you saw, did Mr. Hager
10 communicate to me that the email that I wrote at 3:27
11 p.m. did not accurately reflect the terms of our
12 agreement?

13 A There was no email after -- until Tuesday, when
14 we hadn't heard from you.

15 Q All right. Now, going back to your
16 understanding of what the term "full mutual releases"
17 means. Do you understand, based on the terms of the
18 agreement you thought we had reached --

19 A Full mutual releases -- if you're asking me a
20 question --

21 Q I haven't finished asking the question yet. Did
22 you understand the term full "mutual releases, no
23 carve-outs," to mean that you could sue a Tagnetics
24 parent company?

25 A We assumed -- Tagnetics has no parent company.

TAGNETICS (19-30822) 10-18-19

116

1 Q Did you -- you, yourself, mentioned earlier,
2 that you had resigned from the Board. You don't know
3 all the current financial status of Tagnetics,
4 according to your own statements. So did you
5 understand that you had the right to sue a parent
6 company of Tagnetics, based on the agreement, "full
7 mutual releases, no carve-outs?"

8 A If you'll repeat your question again, please.

9 Q Did you have the understanding when you saw the
10 email "full mutual releases, no carve-outs," that you
11 could sue a parent company of Tagnetics?

12 A I never considered the topic, because as of the
13 date when we filed the petition, there was no parent
14 company.

15 Q Did you have the understanding --

16 A And you have not provided any evidence to the
17 contrary.

18 Q Did you have the understanding that you could
19 sue a subsidiary of Tagnetics based on the provision
20 "full mutual releases, no carve-outs?"

21 A I would assume that a mutual release would
22 include whatever was negotiated during -- obviously
23 when you're in the middle of a negotiation process,
24 you're not negotiating those minute terms. Normally,
25 you --

TAGNETICS (19-30822) 10-18-19

117

1 Q Did you have an understanding --

2 A -- negotiate the key terms.

3 Q -- of what the full mutual releases, no carve-
4 outs means to include a release or the opportunity to
5 sue a subsidiary of Tagnetics?

6 A I wouldn't -- wouldn't have an opinion without
7 consulting an attorney.

8 Q Did you have the understanding that the term
9 "full mutual releases, no carve-outs" allowed you the
10 opportunity to sue an affiliate of Tagnetics?

11 A The same answer applies.

12 Q Did you have the understanding that the term
13 "full mutual releases with no carve-outs" gave you the
14 opportunity to sue an officer of Tagnetics?

15 A You continue to ask me questions, which I
16 wouldn't answer without consulting an attorney. We
17 were not negotiating legal terms. We are negotiating
18 the overall structure of a settlement.

19 Q Mr. Kayser --

20 A It's Dr. Kayser, if you don't mind.

21 Q Did Mr. Hager at 3:58 p.m. on July 26th copy my
22 email and include you on the email, that included the
23 phrase "full mutual releases, no carve-outs?"

24 A He did copy me on that email and his explanation
25 to me, he was just -- you'll have to ask him. He had

TAGNETICS (19-30822) 10-18-19

118

1 an explanation. I expected a document to be
2 transmitted to us, while -- I wasn't involved in this
3 negotiation with you. I expected a document to be
4 transmitted to us, which was clear and concise.

5 Q When you say a document that was clear and
6 concise, are you referring to the settlement agreement
7 that's Exhibit B?

8 A You're not speaking clearly enough for me to
9 comprehend.

10 Q Are you -- when you're saying a clear and
11 concise document, are you referring to Exhibit B?

12 A Exhibit B? You did promise us a rough draft of
13 this agreement by Monday. Am I expecting that? No, I
14 was expecting --

15 MR. STERN: Objection, Your Honor, as non-
16 responsive. I asked if the document he was referring
17 to was a clear and concise agreement, if that's Exhibit
18 B. Nothing about timing is at issue here.

19 DR. KAYSER: Are you speaking to me or is it
20 the Judge? I don't understand.

21 MR. STERN: I made an objection.

22 THE COURT: I don't ask questions unless I
23 specifically ask a question.

24 DR. KAYSER: He's looking at you.

25 THE COURT: Mr. Stern is asking you a

TAGNETICS (19-30822) 10-18-19

119

1 question and, Mr. Stern, you can correct me if I
2 paraphrased you incorrectly. I believe Mr. Stern is
3 trying to ask you is do you believe that Exhibit B is a
4 clear and concise document. Is that correct, Mr.
5 Stern?

6 MR. STERN: Thank you, Your Honor.

7 DR. KAYSER: Is that a clear and concise
8 document? Yes.

9 BY MR. STERN:

10 Q Thank you. Now, did you have an understanding
11 at the time on July 26, 2019, that Compass Marketing,
12 Inc. owned at least some shares of Tagnetics, Inc.?

13 A I don't have -- don't have access anymore, and I
14 didn't look --

15 Q That's not my question, sir. Did you have an
16 understanding as of July 26th --

17 A That Compass Marketing -- very few, at most,
18 yes.

19 Q You didn't know how many shares, but you knew
20 that Compass Marketing owned some shares of Tagnetics,
21 Inc., correct?

22 A Did I know that? No, I did not.

23 Q So you assumed it?

24 A It was never discussed in a Board meeting.

25 Q I'll ask my question again, sir. As of July 26,

TAGNETICS (19-30822) 10-18-19

120

1 2019, was it your understanding that Compass Marketing,
2 Inc. owned at least some shares of Tagnetics, Inc.?

3 A I answered that.

4 Q Yes or no?

5 A No. It was not my understanding that Compass
6 Marketing had shares of stock.

7 Q Okay. Can you turn to Exhibit H? The last
8 page. Is that your signature under Kayser Ventures,
9 Inc., or I'm sorry, Kayser Ventures, LTD?

10 A Yes, of course.

11 Q And that agreement you signed, that's the
12 earlier settlement agreement in this case involving the
13 entity that you owned, which is Kayser Ventures, LTD,
14 correct?

15 A That settlement --

16 Q Is that correct?

17 A I can't be sure unless I can understand you
18 clearly, so please try to enunciate.

19 Q Is this the settlement agreement that you
20 signed, while it's redacted, is that your signature to
21 show the settlement agreement you signed on behalf of
22 Kayser Ventures, LTD, with Tagnetics, Inc.?

23 A I don't understand the nuance of what you're
24 asking me. Yes, I signed the settlement agreement.

25 Q Is that your signature on the last page of

TAGNETICS (19-30822) 10-18-19

121

1 Exhibit H?

2 A Yes. I already testified to that.

3 Q Okay. Now, in that settlement agreement there
4 is a release by Kayser Ventures, LTD, correct? It's on
5 Section 5.

6 A I relied on the advice of my counsel, yes.

7 Q And at that time that release included a release
8 of all Tagnetics' parent companies, corporate and
9 operating affiliates, subsidiaries and related
10 entities, including specifically Compass Marketing,
11 Inc., correct?

12 A Yes. However --

13 Q Yes?

14 A Can I respond?

15 Q My question was does it include the release of
16 Compass Marketing, Inc., with that language that I just
17 read back?

18 A Including, yes. I see where it says, "including
19 specifically Compass Marketing."

20 Q And you signed that agreement?

21 A I did.

22 Q Thank you. You didn't object to the settlement
23 that released Compass Marketing, Inc., as a corporate
24 or operating affiliate or subsidiary --

25 A My lawyer told me it was not a significant

TAGNETICS (19-30822) 10-18-19

122

1 issue.

2 Q Okay.

3 A And I had no -- Kayser Ventures had no dealings
4 with Kayser Ventures and Kayser Ventures was making no
5 claims against --

6 Q Did you have the understanding that you could
7 sue -- on July 26, that you wanted the opportunity to
8 sue one of Tagnetics' officers or directors, if you
9 needed to? That's a bad question. I'll withdraw it.
10 Let me rephrase.

11 On July 26, 2019, when you saw the phrase "full
12 mutual releases, no carve-outs," was it your
13 understanding that you could sue an officer or director
14 of Tagnetics, Inc.?

15 A On Kayser Ventures' behalf?

16 Q No, on July 26, going back to the agreement in
17 your individual capacity?

18 A Which agreement? Which exhibit?

19 Q Exhibit A.

20 A Now repeat your question.

21 Q Was it your understanding when you saw the
22 phrase "full mutual releases, no carve-outs," that you
23 had the right to still sue an officer or director of
24 Tagnetics, Inc.?

25 A If we did a settlement, you're talking about?

TAGNETICS (19-30822) 10-18-19

123

1 Q Yes.

2 A No.

3 Q Okay. Now, earlier you testified that you were
4 the founder of the predecessor company of Tagnetics.
5 Is that DET?

6 A It's what the name became. We had some other
7 name prior to that, before Hobart bought it, but it was
8 DET while it was at Hobart.

9 Q And then you testified that it was reorganized,
10 meaning it was put into bankruptcy?

11 A What was put into bankruptcy?

12 Q Did you put the predecessor company into
13 bankruptcy? You said the phrase "reorganized" during
14 your testimony earlier.

15 A It was not necessary.

16 Q Did you put it into bankruptcy?

17 A No.

18 Q What did you mean when you used the phrase
19 "reorganized" during your testimony?

20 A It was -- you'll have to ask Ron Earley to
21 testify about that. I don't really know the
22 particulars of that, and I don't know exactly how it
23 was done.

24 Q Prior to this proceeding today, did you
25 communicate with shareholders of Tagnetics, Inc. about

TAGNETICS (19-30822) 10-18-19

124

1 this proceeding?

2 A Have I communicated with shareholders?

3 Q Yes.

4 A Not outside of people involved in the company,
5 or in this hearing, I mean.

6 Q Outside of Mr. Hager and Mr. Earley, did you
7 communicate with any other shareholders of Tagnetics?

8 A Ms. Goldsmith may be a shareholder. I don't
9 know.

10 Q Okay. Did you communicate with Dan White at any
11 point about this proceeding?

12 A No.

13 Q No, you did not?

14 A Since when?

15 Q Prior to the filing of the petition for
16 bankruptcy?

17 A Oh, I did, and -- because Dan White sent me an
18 email out of the blue. I didn't even have his email
19 address until he sent me an email.

20 Q And that email from Dan White out of the blue
21 was in early 2019. January sound correct?

22 A I don't have it in front of me, but it could
23 have been in January certainly.

24 Q If I were to show you something to refresh your
25 recollection, would that help, such as the email that

TAGNETICS (19-30822) 10-18-19

125

1 you produced in discovery in this case?

2 MR. STERN: Your Honor, may I approach?

3 THE COURT: Yes, you may.

4 BY MR. STERN:

5 Q Does this email that I showed you refresh --

6 A This was in February, not January.

7 Q I'm looking at an email dated Saturday, January
8 26, 2019, at 11:33 p.m., from Daniel White. It says,
9 "Ken, I hope this email finds you doing well, as well
10 as you can."

11 A Okay.

12 Q Is that the email you're referring to that came
13 out of the blue?

14 A I don't see any email here on January 19th.

15 Q I said January 26, 2019.

16 A January 26th? Yes.

17 Q Is that the email you're referring to?

18 A Excuse me a second. Would you hand me my
19 reading glasses? Oh, I've got them in my pocket,
20 excuse me. Yeah.

21 Q Is that correct?

22 A It's an email, says it's on January 19th. Or
23 no, 26th.

24 Q Is this the email you're referring to that you
25 got out of the blue from Mr. Daniel White?

TAGNETICS (19-30822) 10-18-19

126

1 A Repeat your question.

2 Q Is this the email you were referring to that you
3 got out of the blue from Mr. Daniel White?

4 A Yes, there's an email from Daniel White, January
5 26.

6 Q And then the email above that on February 19th,
7 does he encourage you to communicate with him in his
8 personal email account at danieljwhite@msn.com?

9 A I'm sorry, Mr. Stern, I'm having trouble
10 understanding you. I don't mean to be --

11 Q At the top of the email --

12 A Yes.

13 Q -- there's an email from Mr. White to you, dated
14 February 19th, 2019, at 3:03 p.m. Do you see that in
15 the upper right-hand corner?

16 A February 19th, yes.

17 Q And the first line of the email, at the very far
18 right, Mr. White says to you, Dr. Kayser, in his
19 opening sentence, and at the end of that first line
20 says, "Please use danieljwhite@msn.com; is that
21 correct?

22 A Yes.

23 Q Did you communicate with Mr. White on more than
24 one occasion after that email in January?

25 A I wouldn't be certain without looking at my

TAGNETICS (19-30822) 10-18-19

127

1 records. We made a couple of attempts to get together.
2 Dan White had been a long time acquaintance of mine,
3 but we never did get together.

4 Q Did Mr. Daniel White encourage you to file this
5 bankruptcy proceeding against Tagnetics?

6 A My only recollection -- did he encourage me to
7 do this? No, absolutely not.

8 Q Did he say that it was something that he thought
9 needed to be done?

10 A He did not. He sent me one email saying you did
11 the right thing, but I don't remember the exact date on
12 which that was.

13 MR. STERN: Your Honor, may I approach?

14 THE COURT: Yes, you may.

15 BY MR. STERN:

16 Q Do you recognize this email string that I just
17 handed to you? The top one is from you to Mr. White,
18 on March 22nd, 2019, at 5:18 p.m. And it says, "Hi,
19 Dan, let me know when. I would like to get together.
20 Ken." Underneath that there's an email from Mr. White
21 at his msn.com email account, to you. "Good afternoon,
22 Dr. Kayser." It's dated March 22nd, 2019, at 1:25 p.m.
23 It says, "I noticed your bankruptcy filing online and
24 did share it with my brother, Mike." FWIW, I think.
25 It says, "It is certainly understandable from my

TAGNETICS (19-30822) 10-18-19

128

1 perspective and a necessary action."

2 A Yes.

3 Q Did you discuss the bankruptcy filing with
4 Daniel White prior to you filing?

5 A No.

6 Q Why did -- do you know why he knew to look it up
7 to see if it was filed?

8 A He's an attorney and he is breaking off with his
9 brother and there's all sorts of legal action being
10 taken, and he probably follows all of it. I don't
11 know. You'll have to ask him.

12 Q Okay.

13 MR. STERN: Your Honor, if I may have one
14 second?

15 THE COURT: Yes, you may.

16 MR. STERN: Your Honor, I have no further
17 questions.

18 THE COURT: Thank you, Mr. Stern.

19 DR. KAYSER: Am I done, Your Honor?

20 THE COURT: Do you wish to present any
21 redirect examination of yourself, based upon Mr.
22 Stern's cross-examination?

23 DR. KAYSER: Not particularly, no.

24 THE COURT: All right. Then you may be
25 excused from the witness box.

TAGNETICS (19-30822) 10-18-19

129

1 THE CLERK: Dr. Kayser, you can hang on to
2 those when you're over here, if it helps you hear.

3 DR. KAYSER: All right, thank you.

4 THE COURT: Mr. Kayser, do you wish to call
5 any other witnesses in your case?

6 DR. KAYSER: One moment, Your Honor. Yeah,
7 I'd like to call Ron Earley, please, Your Honor.

8 THE COURT: You may do so.

9 THE CLERK: I just want to remind you, you're
10 still under oath, sir.

11 MR. EARLEY: I acknowledge that.

12 DIRECT EXAMINATION OF RONALD EARLEY

13 BY DR. KAYSER:

14 Q Mr. Earley --

15 A Can you ask me questions? I'm not sure you can
16 ask me questions.

17 THE COURT: Yeah, he can ask you questions in
18 his case.

19 MR. EARLEY: Okay.

20 BY DR. KAYSER:

21 Q Were you a participant in the drafting of the
22 original agreement sent by me on July 20th?

23 A Yes, I was.

24 Q Were you approached by Mr. Stern with an offer
25 of settlement, or negotiating settlement? After July

TAGNETICS (19-30822) 10-18-19

130

1 20th -- let me restate the question.

2 A All right.

3 Q After July 20th were you negotiating terms for
4 restructuring of the timetable for the payments?

5 A Yes, I was.

6 Q Did you discuss what the boundaries of what you
7 were negotiating with both Jon Hager and I?

8 A Yes, I did.

9 Q Did those boundaries include any renegotiation
10 of the terms described in the July 20th letter, other
11 than the financial part of it?

12 A No. We were addressing what seemed to be the
13 concerns of Tagnetics, as they initially told us that
14 our -- that your letter that you sent on the 20th was
15 out of bounds, and they could not even get close to the
16 cash for that. Then they sort of -- we were encouraged
17 to come back with a counteroffer, and obviously we were
18 focused on the cash, because that's the area that they
19 were also most focused on.

20 Q Did you at any time believe that the terms and
21 conditions from the July 20th letter, other than the
22 financial, were ever being discussed?

23 A No.

24 DR. KAYSER: Your Honor, I have no other
25 questions.

TAGNETICS (19-30822) 10-18-19

131

1 THE COURT: Thank you, Mr. Kayser. Any
2 cross-examination for Mr. Earley?

3 MR. STERN: Your Honor, if I may, just to
4 streamline this, maybe just wait until -- I assume Mr.
5 Earley is going to testify himself. If there's going
6 to be more testimony later on, rather than do his
7 piecemeal, do it all at once.

8 THE COURT: That's fine. Mr. Earley, do you
9 intend on testifying in your own case?

10 MR. EARLEY: I absolutely do.

11 THE COURT: All right.

12 MR. STERN: Then I'll just reserve until
13 then.

14 THE COURT: He will reserve all his questions
15 for you at that time.

16 MR. EARLEY: Perfect.

17 THE COURT: The Court accepts that and
18 agrees. Mr. Kayser, do you wish to call any other
19 witnesses in your case?

20 DR. KAYSER: I don't think that's necessary,
21 Your Honor.

22 THE COURT: Okay. Thank you. Any other
23 evidence then, Mr. Kayser, that you wish to introduce
24 in your case?

25 DR. KAYSER: No.

TAGNETICS (19-30822) 10-18-19

132

1 THE COURT: We've admitted Exhibits 3 and 4,
2 I believe it was.

3 DR. KAYSER: Yes.

4 THE COURT: Okay. All right. Then Mr.
5 Kayser, you rest your case?

6 DR. KAYSER: I do.

7 THE COURT: Okay, thank you. Mr. Earley or
8 Mr. Hager, one of you want to proceed with your case?

9 MR. EARLEY: Yes.

10 DIRECT TESTIMONY OF RONALD EARLEY

11 MR. EARLEY: So now that you've met Mr.
12 Kayser, you can understand that he has a low
13 frustration rate. So once we got through the letter of
14 the 20th, and this is all in Exhibit A, we got through
15 the letter from Mr. Kayser to Mr. Stern on the 20th,
16 and then Mr. Stern's response to Mr. Kayser on the
17 23rd. Mr. Hager and Mr. Kayser and I had several phone
18 conversations and discussions, and we decided that I
19 would make an attempt to put together a payment
20 structure that Tagnetics might be able to agree to.

21 So on July 23rd at 1:33 I sent Mr. Stern an
22 email outlining a payment structure that would spread
23 out the payments. It would not change the final
24 amount, but would spread out the payments over a two-
25 year period and, in fact, put some of the total payment

TAGNETICS (19-30822) 10-18-19

133

1 into an undetermined category, to be paid if and when
2 there was a liquidity event.

3 So we felt like this was a significant move
4 towards their trying to reach a settlement, because we
5 had gone from demanding, as you know, \$186,000 for me,
6 151,000 for Mr. Kayser, 148,000 for Mr. Hager. We went
7 to a settlement agreement would pay each of us \$50,000
8 in the initial payment. There would be two sub-
9 payments of \$25,000, spread across six months, and then
10 there would be a -- the remainder would be paid out, if
11 and when the company had a liquidity event.

12 Mr. Stern -- and at this point I'm focused on
13 the cash, because he has told us, both in his emails
14 and in phone conversations we've had, that the company
15 just can't afford this. He was sort of making our case
16 for us, as we look back to the bankruptcy filing.

17 And so we were trying to figure out a way,
18 because Jon and I actually preferred the settlement.
19 Mr. Kayser, on the other hand, we had to drag him to
20 that situation. Mr. Stern came back to me in the
21 afternoon, later in the afternoon, and he thanked me
22 for putting together a structure that was closer in
23 line with what the company could pay, but basically
24 said there's no way we can make the initial payments.
25 And he suggested in his email of July 24th at 5:57 in

TAGNETICS (19-30822) 10-18-19

134

1 the -- it says, and I'm reading, "Initial payment of
2 \$5,000, not \$50,000, to each of you, within five
3 calendar days of you dismissing your claim." And, of
4 course, when I saw that and after I had a moment -- not
5 very -- a while to discuss that with Jon and Ken, you
6 know, we said, you know, this is crazy. They just paid
7 \$90,000 to settle the claim with the other defendants,
8 and here they're asking us to take \$5,000, and there's
9 no guarantee that we're going to get any additional
10 money.

11 And so that's what prompted me to write back
12 and say no chance. Now, no chance to me means no
13 chance we'll accept your offer, or your counteroffer.
14 No chance doesn't mean that we're terminating the
15 negotiations. It's just that you're so far down that
16 we can't really -- we're not even going to consider
17 that.

18 And then he came back to me, and as the week
19 goes along seems like he's more willing to talk to us.
20 He says he thinks it's silly that we've cut off
21 negotiations. Well, we haven't cut off negotiations.
22 We were just responding to his weak offer, and we were
23 saying look, this doesn't seem like you're really
24 serious about settling this with us.

25 So after we received that email, I went back

TAGNETICS (19-30822) 10-18-19

135

1 and had conversations with Mr. Kayser and Mr. Hager,
2 and we talked about what would be best for us, and what
3 we would be willing to do, and we proposed a second
4 payment schedule. And that payment schedule was,
5 instead of \$50,000 up front, we said well, you paid
6 KBL, you paid Bob Strain, and you paid S-Tek a total of
7 \$90,000. Seems like it's reasonable that if you'll pay
8 us \$90,000, as the initial payment, 30,000 apiece, then
9 we're willing to reduce our payments or spread out our
10 payments, and I proposed that to Mr. Stern.

11 We had a phone conversation after I proposed
12 that, and he said I'm willing to take this back to
13 management of Tagnetics, but is there any way you can
14 give me something? I mean, that was pretty much we're
15 negotiating. He said give me something. So I said,
16 look, I think, you know, we would be willing to push
17 out the second and third payments an extra six months.

18 So instead of paying the second payment in
19 six months and the third payment in 12 months, I'll go
20 back and sell the idea that we'll give you one year to
21 make the second payment, and we'll give you -- and the
22 third payment will be an additional six months, to 18
23 months, and oh, by the way, we still will allow the
24 balances of what we would like paid to be put in a
25 bucket and we'll only get that money if the company is

TAGNETICS (19-30822) 10-18-19

136

1 liquidated or has a liquidity event.

2 And at that point it seemed like we were
3 really close. And, of course, as you know, it was
4 Friday and the closer we got to Friday afternoon and
5 the Court closing, and facing the fact that we were all
6 going to have to be in here on Monday morning, Mr.
7 Stern -- we all three had a conference call. We talked
8 about this -- we talked about -- why does that do that
9 to me? Come on, Ron.

10 The timing was right, the money was right,
11 and we talked about notifying the Court, but also --

12 MR. HAGER: Mutual release.

13 MR. EARLEY: Mutual release, right, and there
14 was discussion about that. And so -- oh, and Mr. Stern
15 -- we asked for a full mutual release. Mr. Stern
16 advised us that he didn't think his client would do
17 that and, in fact, he said to us very clearly, I would
18 advise against that. I wouldn't even advise them to
19 give you a clear full release. And we said well, you
20 know, we're right down to the wire here. We want that
21 release, and let us know what they say.

22 So he took it back to them. He called -- he
23 called -- must have been me back, and let me know that
24 they would accept that, and then I got ahold of Jon.
25 At the same time I was on my way here to the court to

TAGNETICS (19-30822) 10-18-19

137

1 file what we believed was going to be a settlement
2 agreement. And so he couldn't -- I wasn't in front of
3 my computer. There were some things going on. I
4 wasn't able to stay completely in touch with him. My
5 wife won't let me drive and text at the same time. I
6 don't know why she won't let me do that. But so I was
7 restricted in what I was able to do, but I was here.
8 Jon was on his computer. Ken was out -- out of pocket.
9 And we notified the Court we had a settlement.

10 At that moment, I believed that what we had
11 reached was an agreement that included the preliminary
12 information we put in, the July 20th, as well as the
13 cash settlement, which we had worked so hard to
14 negotiate, and I expected that we would be able to wrap
15 that up within a week or two. And I felt like that --
16 that we had -- we had all agreed that we wouldn't -- we
17 wouldn't allow the trial to be canceled, unless we all
18 three felt like we had a settlement we could live with.
19 And we all agreed we had a settlement we could live
20 with, and we were disappointed when we got the
21 settlement agreement, because to us it seemed like it
22 was -- there were -- that we lived in two worlds.

23 So that's all I have.

24 THE COURT: Okay. Are there any exhibits,
25 Mr. Earley, which you wish to introduce, other than

TAGNETICS (19-30822) 10-18-19

138

1 what's already been introduced and admitted?

2 MR. EARLEY: No, sir. Everything I talked
3 about has been admitted.

4 THE COURT: Okay, thank you. Mr. Stern, it
5 appears you may want to cross-examine Mr. Earley?

6 MR. STERN: Yes, a few questions, Your Honor.

7 CROSS-EXAMINATION OF RONALD EARLEY

8 BY MR. STERN:

9 Q Mr. Earley -

10 MR. STERN: By the way, before I forget, Mr.
11 Kayser, where is the binder that I handed to you? Is
12 that still up on the witness stand?

13 DR. KAYSER: Where did I find what?

14 BY MR. STERN:

15 Q Mr. Earley, do you have the exhibits in front of
16 you?

17 A No, I don't.

18 Q How about I just hand you this?

19 A That would be perfect, yeah.

20 THE COURT: You may do so.

21 MR. EARLEY: Absolutely, that would be
22 wonderful.

23 BY MR. STERN:

24 Q All right. Mr. Earley, can you turn to Exhibit

25 A on Page 3? You're describing the email at one point

TAGNETICS (19-30822) 10-18-19

139

1 during your testimony on -- you were describing the
2 email on July 24th at one point during your testimony,
3 where you said, "No chance," and --

4 A Yes, sir.

5 Q And if I remember, if I describe your testimony
6 correctly, you said, in your mind, you were not cutting
7 off negotiations at that point. That's an inaccurate -
8 - so my email above, where I said, "to simply cut off
9 negotiations," you're saying is an inaccurate response?
10 I misinterpreted your email; is that correct?

11 A Yes.

12 Q All right. But when you said "No chance," the
13 very next line in your email, July 24th, said, "Look
14 forward to meeting you on Monday."

15 A Yes.

16 Q Meaning see you in court?

17 A Yes, because I didn't believe there was enough
18 time for us to get to a settlement.

19 Q So you thought settlement negotiations were done
20 at that point in time, correct?

21 A No, not particularly cut off, just didn't think
22 the timing was right.

23 Q So you thought there was no way we could get a
24 deal done --

25 A Right.

TAGNETICS (19-30822) 10-18-19

140

1 Q -- before the trial?

2 A I didn't think so.

3 Q Okay.

4 A But that doesn't mean that we weren't willing to
5 try and we weren't trying to keep the ball moving
6 forward.

7 Q Did you offer a counter proposal in your email
8 of July 24th to me, where you said, "No chance, see you
9 on Monday?"

10 A Absolutely.

11 Q Where is the counteroffer on your July 24th
12 email?

13 A No, on the July 24th email, I offered no counter
14 proposal.

15 Q Okay.

16 A But we were -- but we responded to your 25th
17 email quickly with a counter proposal, focused fully on
18 how much cash Tagnetics could afford to hand us.

19 Q You're referring to your email to me on July
20 25th, 2019 at 1:25 p.m.?

21 A Absolutely. There's nothing here that indicates
22 that something is brand new. This is a continuation of
23 what we were doing.

24 Q In your email on July 25th, 2019 at 1:25 p.m. --

25 A Mm-hmm.

TAGNETICS (19-30822) 10-18-19

141

1 Q -- does your email -- does that email refer to
2 the email of July 20th, 2019, that Mr. Kayser had sent?

3 A No, sir. No.

4 Q Okay. Did you -- does that email of July 25th,
5 2019, at 1:25 p.m., from you to me, does that reference
6 any of the prior terms that were discussed in Mr.
7 Kayser's July 20th email?

8 A No, sir.

9 Q Does it reference any non-monetary terms in that
10 email at that point in time?

11 A No, sir, and the reason is is because that was
12 our focus.

13 Q Okay.

14 A I was given --

15 Q I was just asking whether or not you mentioned
16 that. Now, earlier you testified that you and I were
17 discussing the concept of full mutual releases,
18 correct?

19 A Yes.

20 Q And you had said that it was something important
21 to you, that you asked for the full mutual releases,
22 correct?

23 A So we -- so surrounding our employment
24 agreements, which this whole case is about, we were --
25 we were -- it was important to us that there be a

TAGNETICS (19-30822) 10-18-19

142

1 release from our -- from anything inside that contract
2 that bound us.

3 Q If I remember correctly, during your testimony
4 you had said you had brought up the concept during our
5 discussions on July 26th about full mutual releases.

6 A Well, I had brought up the concept of a release.
7 I'm not sure full mutual releases is what I did, but I
8 may have said that.

9 Q That's --

10 A But I'm not sure. So if I did, it might have
11 been the first or second time I've ever used that term
12 in my life, so --

13 Q Okay.

14 A -- for me to have told you, we're really
15 concerned about full mutual release would have been
16 completely out of my engineering, what I do for a
17 living.

18 Q But that is something that we discussed?

19 A We did discuss the release, there's no question.

20 Q And you agree that mutual releases are non-
21 monetary terms, correct?

22 A Mutual release is a non-monetary term.

23 Q And during that discussion that you and I had on
24 the phone, where we were discussing the full mutual
25 releases, did you bring up any of the other non-

TAGNETICS (19-30822) 10-18-19

143

1 monetary terms that Mr. Kayser mentioned in his July
2 20th email?

3 A No, but there's a good reason.

4 Q Yes or no, did you bring them up?

5 A No, I didn't.

6 Q Did you -- during those conversations did you
7 bring up any other payments than what we were
8 discussing in what ultimately became that chart that
9 you included in your July 25th email? Did we discuss
10 any other monetary terms, other than what's reflected
11 on that chart?

12 A The answer is no.

13 Q Okay.

14 A It was the only hurdle that we were working on.

15 Q Then on July 26th, 2019, at 3:27 p.m., my email
16 to you -- Page 1 of Exhibit A, my email to you, Mr.
17 Kayser and Mr. Hager, set forth the key terms, and do
18 you agree that this set forth the key terms that we
19 discussed?

20 A I agree these set forth the key terms that we
21 had been negotiating and hadn't agreed to, to this
22 point.

23 Q And then is it an accurate statement in the
24 email from Mr. Hager to me on Page 1 of Exhibit A, on
25 July 26, 2019, at what appears to be 3:56 p.m., where

TAGNETICS (19-30822) 10-18-19

144

1 Mr. Hager says, "I am responding for Kayser, Earley and
2 Hager, saying we agree to the terms put forth as
3 documented above." Really meaning below. Is that an
4 accurate statement, that he was authorized to speak for
5 you at that point in time?

6 A Yes, he was.

7 MR. STERN: No further questions, Your Honor.

8 THE COURT: Thank you, Mr. Stern.

9 MR. STERN: I'm sorry. Can I approach, Your
10 Honor, to get the binder back?

11 THE COURT: Yes, you may.

12 MR. STERN: Thank you.

13 THE COURT: Mr. Earley, do you wish to
14 provide any redirect examination of yourself in
15 response to Mr. Stern's cross-examination?

16 REDIRECT TESTIMONY OF RONALD EARLEY

17 MR. EARLEY: So my only -- my redirect is
18 that obviously if you follow this email train from the
19 20th through the 26th, when we agreed to it, it's clear
20 that there was a very limited focus to what we -- what
21 we and Tagnetics had not agreed to, and it was about
22 the cash. Their initial push-back was we can't afford
23 that, we don't have the cash. And the cash, cash,
24 cash. So we became focused on getting the cash and
25 making the assumption on what that means, that the

TAGNETICS (19-30822) 10-18-19

145

1 terms that Mr. Kayser had put forth on the 20th,
2 because they were not specifically rejected, were still
3 in play.

4 That's all I have.

5 THE COURT: Thank you, Mr. Earley. Stay
6 there. Stay there.

7 MR. EARLEY: I'm sorry. Thank you.

8 THE COURT: Stay there. Any recross-
9 examination?

10 MR. STERN: No, Your Honor.

11 THE COURT: Okay, now still stay there.

12 MR. EARLEY: I am.

13 THE COURT: Okay. I've got the same two
14 questions for you that I asked Mr. Stern, when he was
15 on the stand.

16 MR. EARLEY: Yes, sir.

17 THE COURT: The first was -- and I think this
18 is particular relevant for you, since I think you're
19 the one who came up with this payment chart. What does
20 liquidity event mean in your payment chart?

21 MR. EARLEY: So liquidity to me means that if
22 there was a cash transaction or a transaction that --
23 where ownership of the company, 50 percent or 50.1
24 percent of the company changed from its current
25 ownership to a new ownership, then that's a liquidity

TAGNETICS (19-30822) 10-18-19

146

1 event, and we would expect to be paid out of that
2 transfer. Because in general what happens during those
3 transfers is someone is putting a bunch of money in to
4 get the 51 percent that they need to control the
5 company. So that to us is a liquidity event, whether
6 it happens through a stock swap, whether it happens by
7 someone buying up a bunch of options. It really
8 doesn't matter how it happens. It's when there's a
9 major cash event, where cash becomes available, to pay
10 previous creditors and along that line, and it
11 anticipates that that could still happen.

12 THE COURT: Okay. My second area was the
13 stock.

14 MR. EARLEY: Mm-hmm.

15 THE COURT: What was your understanding as to
16 the effect of a settlement -- if a settlement was
17 reached on July 26th, as to any stock or equity
18 interest, which you held in the company?

19 MR. EARLEY: So my -- my -- well, clearly I
20 don't believe that Tagnetics has the capability to wipe
21 out my stock ownership. I paid cash for it. I own it.
22 It's in my name. I've got the certificates. I possess
23 them. It's hard for me to believe that they can wipe
24 that out on the settlement. It's also probably not a
25 legal thing they could do.

TAGNETICS (19-30822) 10-18-19

147

1 Number two, all the other equity I have in
2 the business I realize is at stake, and so the only way
3 that I would expect to get the other payments is if the
4 company were successful, or if someone came in and
5 decided to throw a lot of cash at it to try to make it
6 move forward. But from a stock standpoint, what we
7 were asking for was nothing more than just acknowledge
8 that we have it, acknowledge that it's there.

9 But I don't believe they can touch -- there's
10 -- yeah, I believe there are laws that would keep them
11 from stripping us from our stock, just because we
12 settled an employment contract. They are completely
13 two different things.

14 THE COURT: Okay. Thank you, Mr. Earley.
15 Any questions based upon the Court's questions, Mr.
16 Stern or Mr. Kracht?

17 MR. STERN: No, Your Honor.

18 THE COURT: Okay, thank you. Mr. Kayser, any
19 questions for Mr. Earley, based upon my questions of
20 Mr. Earley?

21 DR. KAYSER: No, sir.

22 THE COURT: Mr. Hager?

23 MR. HAGER: No, sir.

24 THE COURT: Okay. Thank you, Mr. Earley.
25 Now you may leave the witness box.

TAGNETICS (19-30822) 10-18-19

148

1 MR. EARLEY: Thank you, Your Honor.

2 THE COURT: Appreciate your participation.

3 Is there any other evidence, Mr. Earley, which you wish
4 to present in your case?

5 MR. EARLEY: I'm going to turn it over to Mr.
6 Hager.

7 THE COURT: Okay. Thank you, Mr. Earley. I
8 guess the floor is yours, Mr. Hager.

9 MR. HAGER: Thank you, Your Honor. I'll do
10 my best to keep it brief.

11 THE CLERK: I just want to remind you, as
12 well, you're still under oath.

13 MR. HAGER: Yes, understood.

14 DIRECT TESTIMONY OF JONATHAN HAGER

15 MR. HAGER: I guess without regurgitating the
16 same story, I suppose, it was my understanding on July
17 26th that that was the culmination of the negotiation
18 for a portion of the proposal from July 20th, from Dr.
19 Kayser. It was the portion that was raised
20 specifically at issue by Mr. Stern, to say that the
21 company was short on cash, they could not afford those
22 type of cash payments at this time. Specifically, he
23 said at this time.

24 So as Mr. Kayser said, we talked with Mr.
25 Earley and he agreed that he would be the point person

TAGNETICS (19-30822) 10-18-19

149

1 to negotiate that cash settlement. We agreed to kind
2 of meet Tagnetics part way to say we could go ahead and
3 come up with a schedule. We continued down that path
4 of, I won't say giving in, but kind of compromising on
5 a number of things, to try to meet the goals that
6 Tagnetics was looking for, saying that they were short
7 on cash and needed something more reasonable.

8 I do believe we came up with something very
9 reasonable. Nowhere in the initial response from the
10 July 20th proposal was there a specific call-out to say
11 these other terms that were required by Mr. Kayser's
12 proposal, that those were off the table. That was
13 never mentioned. It was never mentioned in any of the
14 other following discussions. I understand Mr. Stern
15 says we did not re-mention it. He never brought -- was
16 -- brought any disagreement to it, so we didn't feel
17 that was a topic that needed to be fine-tuned,
18 especially at the 11th hour, when we were trying to be
19 cognizant of when the court was going to close, which
20 would obviate the need for us to come here for court.

21 The only other point I guess I wanted to
22 include in here was that when -- we understood we would
23 see a draft agreement over the weekend, or by Monday,
24 and we didn't. So on Tuesday I went ahead and
25 restated, summarized what we believed the agreement

TAGNETICS (19-30822) 10-18-19

150

1 should include, and I sent it to Mr. Stern. Previous
2 testimony, he said he doesn't recall receiving that or
3 doesn't recall reading that. And then there was no
4 response to that email.

5 We then got the draft agreement and in that
6 response to the draft agreement, I pointed out the same
7 issues. I said, these are the things that are missing
8 in this draft agreement, which we believe we had
9 already agreed to.

10 At that point, and in testimony the statement
11 was these were new claims, these were new requirements,
12 these were things that were out of scope from the
13 agreement. And I guess my point is that the email of
14 that Tuesday, I believe it was July 30th, demonstrated
15 that we were under the understanding of what we had
16 agreed to on Friday, conclusive of the July 20th email
17 and the modifications going into July 26, and we again
18 stated that again, after receiving the draft agreement.

19 There is one other point I wanted to make
20 about the draft agreement. A draft, as my
21 understanding, means it's something that is welcome to
22 be modified or discussed. And in my response, after
23 receiving the draft agreement, I even pointed out a
24 small fact, that the address that was listed for me in
25 that agreement was incorrect, and I had filed that

TAGNETICS (19-30822) 10-18-19

151

1 address change with the court many, many weeks before.
2 In fact, months before. And all the correspondence
3 that I was receiving at home was going to the correct
4 address.

5 And I see in the evidence or exhibits
6 supplied to the court, that address still hasn't even
7 been changed. So in other words, the draft agreement
8 has never been modified from the first day it was sent
9 to us, even after we had raised issues with it, and
10 wanted to discuss changes to it.

11 So I guess my concerns about this are that we
12 put forth a very good effort, I believe, to negotiate a
13 settlement in the hopes that Tagnetics could not only
14 have an option to succeed, but also pay their debts to
15 us, and that in response there really wasn't any
16 concerted effort to refine that agreement into
17 something that was acceptable.

18 THE COURT: Okay. Thank you, Mr. Hager. Are
19 there any exhibits which you wish to introduce, which
20 have not already been introduced and admitted?

21 MR. HAGER: If Exhibit 5 was already
22 introduced, I know we discussed it earlier.

23 MR. EARLEY: Yes.

24 THE COURT: So Exhibit 5 was admitted?

25 MR. HAGER: It was the one that we had to get

TAGNETICS (19-30822) 10-18-19

152

1 a new copy of.

2 THE COURT: I know 3 and 4 were admitted. 3
3 and 4 was admitted. I do not believe 5 was admitted.

4 MR. HAGER: Well, I'd like to admit 5,
5 because that has that email exchange on the -- on July
6 30th and past that. The one that was recopied by the
7 Court.

8 THE COURT: Is there an objection, Mr. Stern,
9 to --

10 MR. STERN: I just want to make sure I'm
11 understanding. Are you referring to the July 30th
12 email, if I remember correctly?

13 MR. HAGER: Right. We discussed the July
14 30th email, when you were on the stand. And that's
15 what we had to re-photocopy.

16 MR. STERN: If they want to admit that, I
17 have no objection to it being entered. I just wanted
18 to be clear.

19 THE COURT: Yeah, I want to be clear too.
20 Are we just talking -- was the July 30th email part of
21 a series of emails?

22 MR. HAGER: Yes.

23 THE COURT: So are you just seeking admission
24 of the July 30th email or the whole group?

25 MR. HAGER: I mean, I guess the whole group

TAGNETICS (19-30822) 10-18-19

153

1 of Exhibit 5, but most of Exhibit 5 is in your Exhibit
2 A, I believe.

3 MR. STERN: I think what happened, Your
4 Honor, if I may, and obviously if I'm wrong, please --
5 looks like the printout here cuts off some of the
6 earlier string, but it seems to allude to an earlier
7 part of the string, that goes back to either my August
8 14th -- no, it couldn't be the August 14th email. I'm
9 not really sure what it goes back to, but it looks like
10 there's a reference to some earlier emails that just
11 are not part of or printed out as the exhibit. And so
12 that's why I'm a little unclear as to what we're really
13 looking at. Nevertheless, he's testified he sent me
14 that email. I personally don't see it being relevant
15 to whether or not there was an agreement in place, but
16 I'm not going to really object to what -- to its
17 admission, if they want to get it admitted into
18 evidence. If he's testifying that he sent it to me,
19 I'm not in a position to refute that. I don't think
20 it's relevant to whether or not we had an agreement on
21 July 26th. So if he wants that admitted, I'm going to
22 say as long as it's the email on July 30th or after,
23 I'll agree to its admission. Does that make sense?

24 THE COURT: Does it include emails prior to
25 July 30th?

TAGNETICS (19-30822) 10-18-19

154

1 MR. HAGER: Yes. Exhibit 5 included from the
2 beginning, July 20th, all the way through to, I
3 believe, August 3rd or 5th or, no, past that, all the
4 way through to the draft agreement and so on, and their
5 Exhibit A didn't include that portion, past July 26th.

6 MR. STERN: Your Honor, as I'm looking at it
7 a little bit more closely, I don't want to be
8 difficult, but the way this is printing out, it's got
9 an August 1 email after July 30th email, so I'm not
10 really sure how this string is working and what's
11 really being included, so I -- my colleague and I are
12 trying to -- Mr. Kracht and I are trying to look at
13 this and try to understand it. It's an odd printout,
14 not the way emails normally go, in reverse
15 chronological order, and we're really having trouble
16 making sense out of this. And honestly, I don't
17 remember a lot of this stuff, and so I'm at a little
18 bit of a disadvantage.

19 MR. HAGER: That's your correct address in
20 that statement.

21 MR. STERN: It does. I mean -- it does have
22 my email address there and that is my email,
23 stern@kaganstern.com. That is correct. You know,
24 that's why I say -- let me confer with Mr. Kracht for a
25 minute.

TAGNETICS (19-30822) 10-18-19

155

1 THE COURT: Yeah, that's fine.

2 MR. STERN: So as I've talked with Mr.
3 Kracht, we're not going to object to the admission, as
4 long as it's limited to the -- what we're seeing is
5 only emails from July 30th afterwards. I'm not seeing
6 anything prior to that. We're not seeing --

7 THE COURT: It appears to me the first one is
8 July 19th, at least at the top of my Exhibit 5.

9 MR. HAGER: Yeah, the emails prior to the
10 30th would be the 26th.

11 MR. STERN: Does this continue through with
12 the 26th, and then more after that?

13 MR. HAGER: Correct.

14 MR. STERN: If that's the case, then we're
15 not going to object, Your Honor.

16 THE COURT: Okay. Then the Court will admit
17 Petitioning Creditors' Exhibit 5, which, from what I'm
18 reviewing, starts with a July 19th, 2019 email at 4:14
19 from, I believe, Mr. Stern, yeah, to Ken, and then it
20 goes to emails through -- let's see here -- appears to
21 be Friday, August 2nd, I believe. Sunday, August 4th.
22 Yeah, Sunday August 4th, I think is the last --

23 MR. STERN: That sounds correct, Your Honor,
24 is the last one in the string.

25 THE COURT: Okay. Then the Petitioning

TAGNETICS (19-30822) 10-18-19

156

1 Creditors' Exhibit 5 is admitted.

2 (Petitioning Creditors' Exhibit 5 received
3 into evidence.)

4 THE COURT: Anything else you wish to -- any
5 other exhibits you wish to admit?

6 MR. HAGER: No. No, Your Honor.

7 THE COURT: Okay. Is there any cross-
8 examination, Mr. Stern or Mr. Kracht?

9 MR. STERN: Just really briefly.

10 CROSS-EXAMINATION OF JONATHAN HAGER

11 BY MR. STERN:

12 Q I think, Mr. Hager, you, I think, acknowledged
13 the point on your testimony, I just want to be clear.
14 None of the emails on July 26th from you to me did you
15 make any specific reference to any of the contents of
16 the July 20th email from Mr. Kayser, correct?

17 A I did not.

18 MR. STERN: No further questions, Your Honor.

19 THE COURT: Okay, thank you, Mr. Stern. Any
20 redirect examination of yourself, Mr. Hager, based upon
21 that question?

22 MR. HAGER: No, Your Honor.

23 THE COURT: I just have the same questions.
24 Is there any other different testimony you would
25 provide or information you'd provide with respect to

TAGNETICS (19-30822) 10-18-19

157

1 the definition of liquidity event?

2 MR. HAGER: No, consistent with what I saw in
3 the draft agreement, I believe was what I also included
4 in that email on July 30th, as out of our employment
5 contracts. I think the wording is similar or the same.

6 THE COURT: And what about the stock
7 ownership issue, what is your -- do you have any --
8 what's your belief that any impact of a July 26
9 settlement, if there was a July 26 settlement, would
10 have on your stock or equity interest in Tagnetics?

11 MR. HAGER: My understanding, correspondence
12 or agreement on July 26th would not affect any stock
13 ownership. Unfortunately, my stock ownership was
14 diluted quite far and the stock options, which I
15 understood would no longer be valid, but --

16 THE COURT: Okay, thank you, Mr. Hager. Any
17 additional questions based upon the Court's questions?

18 MR. STERN: No, Your Honor.

19 MR. EARLEY: No, Your Honor.

20 THE COURT: Either Mr. Kayser or Mr. Earley?
21 No.

22 MR. EARLEY: No.

23 THE COURT: Thank you, Mr. Hager. Appreciate
24 your participation. Any other evidence you wish to
25 present, Mr. Hager?

TAGNETICS (19-30822) 10-18-19

158

1 MR. HAGER: No, thank you.

2 THE COURT: Thank you. I believe that
3 concludes everybody's cases; is that correct?

4 MR. EARLEY: Yes, sir.

5 THE COURT: Now, let's see. It is -- what
6 time is it? I'm trying to wake up my computer here.

7 THE CLERK: 2:38, Your Honor.

8 THE COURT: 2:38. Now, do you wish to make
9 brief closing arguments or do you wish to waive closing
10 arguments? Do you wish to file any post-trial brief or
11 memorandum in lieu of oral -- of arguments today? I'll
12 leave it all up to you. You're the ones who have to
13 travel. So --

14 MR. STERN: Your Honor, we'd be fine with
15 just brief closing arguments. We want to just confirm
16 the exhibits that have been admitted. It's our
17 understanding that our Exhibits A through I have been
18 admitted, except for Exhibit E.

19 THE COURT: That's correct.

20 MR. STERN: And then for the Petitioning
21 Creditors, they've had 3, 4 and part of 5 admitted.

22 THE COURT: 3, 4 and all of 5.

23 MR. STERN: All of 5.

24 THE COURT: 3, 4 and 5, yes.

25 MR. STERN: Just wanted to make sure that

TAGNETICS (19-30822) 10-18-19

159

1 we're in agreement as to what the exhibits were.

2 THE COURT: Yeah.

3 MR. STERN: If I may then, Your Honor?

4 THE COURT: Yes, you may.

5 MR. STERN: Thank you. Your Honor,
6 notwithstanding the protestations to the contrary by
7 the Petitioning Creditors, the email string is clear
8 that they never included any reference or any notice
9 that those terms of that July 20th email that they're
10 referring to carry through in any respect.

11 To say that "See you in court on Monday"
12 means anything other than negotiations are terminated,
13 again, seems to defy logic. And they had multiple
14 opportunities to reference those other terms that they
15 are now seeking to include.

16 And it further defies logic, when you see the
17 term "full mutual releases, no carve-outs," or as you
18 saw in the email where it says "Total settlement
19 payment," they're referring to other loan payments.
20 That's either some other payment beyond the total
21 payment that's in there, or it's a carve-out or
22 exception to the full mutual releases. No matter how
23 you slice it, there's an inconsistency there with both
24 those terms. That cannot be.

25 And yet they repeated it not once, not twice,

TAGNETICS (19-30822) 10-18-19

160

1 but three times in those emails from Mr. Hager to me,
2 on July 26th. It's really clear that those terms are
3 reflected on the July 26th email. The settlement
4 agreement that I drafted is consistent with that email.
5 Even Mr. Earley's description of what a liquidity event
6 was is consistent with the terms that were written in
7 there. Not even objecting to that.

8 But they're seeking additional payments that
9 are beyond the total, capitalized total, that's
10 reflected in Exhibit A. I'm sorry, Exhibit I.

11 And they are also seeking additional payments
12 beyond what's reflected there, which would be some sort
13 of carve-out. You cannot have a full mutual release,
14 no carve-outs, and then say but, later on, well,
15 there's this other payment, this other loan, this
16 licensing agreement. That's inconsistent on its face.
17 They cannot claim ignorance of what that term means and
18 expect to be -- to negotiate and then say well, we
19 didn't understand that, later on.

20 I repeated not once, not twice, but three
21 times in those email strings that we -- to seek legal
22 counsel for guidance. And apparently they were having
23 the assistance of legal counsel behind the scenes, from
24 what they've testified to.

25 To sit here in court today and rewrite the

TAGNETICS (19-30822) 10-18-19

161

1 plain meaning of what those terms are is just not
2 right. We have an agreement. It's reflected in
3 Exhibit B. The terms that I wrote are consistent with
4 what that email string says, and we believe the
5 agreement should be enforced as it is written.

6 Thank you, Your Honor.

7 THE COURT: Thank you, Mr. Stern. Mr.
8 Kayser, do you wish to present any closing argument?

9 DR. KAYSER: Yes, Your Honor. I think one
10 thing that's clear, regardless of all the testimony or
11 how you view it, is that we don't agree on an
12 agreement. And we didn't realize it on Friday, when we
13 agreed to cancel the trial that we didn't agree, but I
14 think that was either intentionally misleading us or
15 planning on falling back on the fact that we are pro
16 se.

17 In every negotiation, usually the lawyers do
18 the language of the agreement. They don't get involved
19 in the actual negotiation of the terms of the
20 agreement, and they certainly don't use legal terms to
21 disguise what they really mean. The word carve-out has
22 a different meaning in a hundred different contexts,
23 and we thought the context it was being discussed in
24 was based on our July 20th, and when he said no carve-
25 out, he meant no changes to those conditions. And we

TAGNETICS (19-30822) 10-18-19

162

1 don't have an agreement. I request the Court go ahead
2 with the trial.

3 THE COURT: Okay. Thank you, Mr. Kayser.
4 Mr. Earley, do you wish to make a closing argument?

5 MR. EARLEY: No, sir.

6 THE COURT: Okay, thank you. Mr. Hager, do
7 you wish to make a closing argument?

8 MR. HAGER: I guess just one brief one. So
9 there's been a lot of discussion about the use of this
10 word "full mutual release" and stating that we should
11 understand fully what that is. And again, I just want
12 to point out the context where that was raised was on a
13 phone call between the four of us, where Tagnetics
14 wanted to reserve the right to, I guess, sue or
15 litigate against us, and not provide a release from our
16 employment and from their time on the Board. And it
17 was slightly heated discussion, I must say. And so at
18 the end of that discussion and the following conclusion
19 of that was that, fine, you'll get a full mutual
20 release if my client agrees to it.

21 So our understanding was it was focused on
22 one party's ability to sue the other party over our
23 employment or our involvement, in their case, on the
24 Board. It has now been stretched to say a full mutual
25 release means any other agreements that were ever done

TAGNETICS (19-30822) 10-18-19

163

1 between Tagnetics and any of the three pro se parties
2 would be wiped out, and that was never an
3 understanding. It was never clearly stated and that's
4 the point that we've all been trying to make, that when
5 that was introduced as part of the draft agreement,
6 that took us by surprise, and that's when we said we
7 don't feel we have an agreement on what those terms
8 are. That's all I wanted to --

9 THE COURT: Thank you, Mr. Hager. The Court
10 anticipates issuing an oral decision. We do that quite
11 a bit. I can assure you we put as much time really
12 into our oral decisions as we do in our written
13 decisions, only we do save a little bit of time and are
14 able to get them up, our oral decisions done, quicker
15 than a formal written decision, simply because we're
16 not crossing all the T's and dotting the I's, in terms
17 of the way it appears on a piece of paper, and the oral
18 decisions I read.

19 I'm not going to do that today. We're going
20 to digest all this and I will render an oral decision.
21 I'm thinking like in a week or so, but I'm going to
22 leave that to -- and I'll do it by telephone. You
23 don't need to come back here or anything. I'll leave
24 it to Ms. Behnken and the rest of you to come up with a
25 date and time for me to render that oral decision. I'm

TAGNETICS (19-30822) 10-18-19

164

1 thinking like next Friday, if that works for people, or
2 somewhere in that time frame. We will need a few days
3 to digest this, and get the oral decision put together
4 in writing, so that I can be in a position to read it.

5 I also wanted to throw out the caveat, is I
6 am now pretty much the only bankruptcy judge in Dayton,
7 and we've got a lot of different things up in the air,
8 and so I may need to have a little flexibility in
9 exactly when we end up having that oral decision. But
10 if you need to get on the road, just touch base with
11 Ms. Behnken on Monday, or she'll touch base with you
12 and we'll get at least a tentative date and time set up
13 for me to render the oral decision on this.

14 Any questions on that or anything else at
15 this point?

16 MR. STERN: No, Your Honor, that makes sense.
17 And Ms. Behnken, I guess we'll communicate next week
18 via email between the parties?

19 THE CLERK: I will contact everybody by
20 email.

21 MR. STERN: Thank you.

22 THE COURT: Anything from the Petitioning
23 Creditors?

24 DR. KAYSER: No.

25 THE COURT: I want to thank you, everybody.

TAGNETICS (19-30822) 10-18-19

165

1 You all were very professional, and for being -- I have
2 to say, if you're not the best pro se parties I've ever
3 had in my courtroom, you're at the top of the list, so
4 I congratulate you on it and commend you on that,
5 commend Mr. Stern and Mr. Kracht for your professional
6 presentations. It's been very helpful to the Court.
7 And, otherwise, we will talk to you when we're ready to
8 render the oral decision. Thank you.

9 THE CLERK: All rise. Court is adjourned.

10 (End of proceedings at 2:48 p.m.)
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State of Ohio)

Cuyahoga County)

CERTIFICATE

I, Marc Eppler, a Notary Public, within and for the State of Ohio, do hereby certify that the above transcript is a true and accurate record of the hearing held before the HONORABLE GUY R. HUMPHREY. This record was prepared from an audio recording provided by the Court.

IN WITNESS WHEREOF, I have hereunto set my hand and seal of office in Cleveland, Ohio on this 7th day of February, A.D., 2020.



MARC EPPLER
Notary Public - State of Ohio
My Commission expires 9-14-2023

TAGNETICS, INC.

October 18, 2019

	account (3) 21:5;126:8;127:21	adjournment (2) 3:4;92:25	afternoon (6) 25:25;30:13; 127:21;133:21,21; 136:4	49:20;50:6,24;51:4; 19:52;25:54;19:55:1; 61:22;62:8;64:1,24; 65:15;22:25;67:10; 69:18;73:4,5,6,9,11; 17,18,20;75:13;78:7; 84:8,11,14;85:1,6,9; 16:87;14:15;88:10; 89:6,9;95:23;96:1; 97:15,16;98:4,5,6,8; 16,17,23;99:10,13,21; 102:22;103:4,22; 106:15;107:3,16,17; 109:19,20;110:21,22; 115:5,12,18;116:6; 118:6,13,17;120:11; 12,19,21,24;121:3,20; 122:16,18;129:22; 133:7;137:2,11,21; 149:23,25;150:5,6,8; 13,18,20,23,25;151:7; 16;153:15,20;154:4; 157:3,12;159:1; 160:4,16;161:2,5,12; 18,20;162:1;163:5,7
\$	accountants (1) 39:21	adjust (1) 20:17	afterwards (2) 84:14;155:5	agreements (13) 31:23;40:14;43:11; 20:65;13;66:1;69:14; 71:23;73:14;87:21; 23;141:24;162:25
\$186,000 (1) 133:5	accruing (1) 50:10	administrative (1) 9:21	again (49) 7:1;12:15;15:11; 25:13;27:25;28:23; 31:16;35:8,18;38:12; 42:17;43:21;44:18; 46:8;47:15;48:21; 49:9,13;51:12,13; 53:9;58:7;65:5;71:5; 72:3;74:4;75:25; 76:12;82:13;85:20; 92:22;95:10;103:10; 106:8,10,14,16;109:1; 110:3,25;112:3; 114:16,20;116:8; 119:25;150:17,18; 159:13;162:11	agrees (3) 61:20;131:18; 162:20
\$25,000 (1) 133:9	accurate (7) 55:10;66:8;88:1; 111:20,24;143:23; 144:4	admission (25) 8:20;46:7;53:21; 54:7;55:21,25;56:6; 10,25;57:4;58:11,20, 24;59:18,21,25;103:7; 12,18;104:3,6; 152:23;153:17,23; 155:3	against (9) 29:4;31:20;41:22; 66:17;94:4;122:5; 127:5;136:18;162:15	ahead (6) 11:1;77:1;96:11; 149:2,24;162:1
\$30,000 (3) 33:13;50:9;51:8	accurately (7) 15:22;36:6;37:2; 88:13,23;115:4,11	admit (12) 46:8;53:22;56:4; 57:9,14;60:6,8,9; 152:4,16;155:16; 156:5	agents (2) 39:21;42:8	ahold (1) 136:24
\$486,700 (1) 23:14	acknowledge (5) 23:23;104:9; 129:11;147:7,8	admitted (35) 10:4,5,6,8,16,17; 18:18,20,21;57:11; 58:13;60:10;90:20; 101:6,23;102:1,20,23; 103:21;104:12;105:4; 132:1;138:1,3; 151:20,24;152:2,3,3; 153:17,21;156:1; 158:16,18,21	ago (4) 35:1;72:24;90:14; 93:19	aid (1) 105:11
\$5,000 (3) 111:23;134:2,8	acknowledged (1) 156:12	Admittedly (2) 36:20;84:9	agree (26) 34:9,23;41:23;46:2, 9;47:4;62:5;69:24; 71:1,4;90:14;95:11; 98:7;105:24;112:19; 113:3,11,17;132:20; 142:20;143:18,20; 144:2;153:23;161:11, 13	air (1) 164:7
\$50,000 (3) 133:7;134:2;135:5	acknowledgment (1) 103:19	adopt (1) 17:5	agreed (50) 31:8;32:19,21; 34:13;36:1,6,10; 48:20;49:6,18;52:3; 53:10;63:25;72:8; 84:6,13;85:2,94:11; 13,19,24;95:6,11,13; 96:7,8,11,14;97:19; 23;98:2,3,7;99:18,18, 23;105:21;112:25; 113:4;114:9;137:16; 19;143:21;144:19,21; 148:25;149:1;150:9, 16;161:13	alleged (17) 13:23;14:6,13; 15:10,15;20:7,20,21; 22:22;28:7,12;31:13; 37:4;39:2;43:17; 87:19;88:16
\$500,000 (1) 111:22	acquaintance (1) 127:2	adopting (1) 16:25	agreement (152) 13:24;14:4,8,9,12; 15:20,23;16:8,14,16; 31:7;33:4,6,9,11,12, 14;35:4,16,19,24; 36:19,20;37:1,10,20; 38:15,21;40:2;41:4; 42:11,14,22;43:3,14, 22;45:20;48:11,14;	allow (4) 47:14;95:12; 135:23;137:17
\$90,000 (6) 28:24,25;33:13; 134:7;135:7,8	across (1) 133:9	adopts (1) 87:22		allowed (1) 117:9
A	Acting (1) 54:22	advice (3) 29:25;106:10;121:6		allude (2) 73:3;153:6
ability (3) 29:5;57:13;162:22	action (5) 29:18;56:18;94:4; 128:1,9	advise (4) 15:15;33:7;136:18, 18		alluded (1) 71:20
able (20) 6:15;7:12;9:4; 22:10,13;24:20;28:2; 41:21;69:16;70:15; 71:12;75:5;82:22; 92:1;96:19;132:20; 137:4,7,14;163:14	actual (1) 161:19	advised (1) 136:16		along (8) 19:2;32:9;94:24; 96:7;99:22;108:12; 134:19;146:10
above (10) 24:17;34:10,10; 86:14;107:16;111:16; 113:17;126:6;139:8; 144:3	actually (7) 10:14;55:9;62:17; 69:5;81:16;111:9; 133:18	advising (1) 113:23		always (3) 77:5;99:2;107:9
Absolutely (12) 4:18;17:22;46:3; 57:23;82:1;103:24; 106:12;127:7;131:10; 138:21;140:10,21	adamant (1) 31:24	Aeronautics (1) 93:17		
acceleration (1) 51:3	added (7) 15:1,4;50:9;76:25; 77:3;85:6,12	affect (3) 45:14,14;157:12		
accept (3) 16:18;134:13; 136:24	adding (1) 64:15	affidavit (4) 56:10,12;57:12; 58:16		
acceptable (3) 26:9;43:19;151:17	addition (2) 45:12;49:2	affiliate (8) 43:4;51:16,21;55:6, 12,17;117:10;121:24		
accepting (1) 33:16	additional (15) 15:10,18;16:22; 28:8;49:3;50:23;68:1, 9,13;87:8;134:9; 135:22;157:17;160:8, 11	affiliates (13) 39:13,17;41:18; 42:3,5,7;43:1,10,20; 44:15,20;51:15;121:9		
accepts (1) 131:17	address (12) 4:12;21:23;23:22; 34:19;73:25;124:19; 150:24;151:1,4,6; 154:19,22	afford (4) 133:15;140:18; 144:22;148:21		
access (2) 22:10;119:13	addressed (3) 21:1;44:1;63:14			
accommodate (1) 24:11	addresses (2) 55:2,3			
accordance (1) 6:13	addressing (1) 130:12			
according (1) 116:4	adjourned (1) 165:9			
accordingly (1) 92:3				

TAGNETICS, INC.

October 18, 2019

ambiguity (1) 51:19	argue (1) 9:6	128:8	56:19;123:10,11,13, 16;124:16;127:5,23; 128:3;133:16;164:6	4:21,22;8:22;63:19; 78:20;88:18;91:4; 92:9;135:2;148:10; 165:2
among (3) 35:16;38:16;94:5	argument (9) 11:22;40:23,25; 41:25;63:6;65:18; 161:8;162:4,7	attorneys (3) 17:7;22:23;39:22	bar (1) 7:18	better (3) 9:21;11:5;91:9
amount (7) 19:1;35:24;62:16; 63:5;94:18;95:19; 132:24	arguments (5) 9:5;158:9,10,11,15	attorneys' (1) 29:13	base (2) 164:10,11	beyond (7) 14:14;15:11;36:11; 77:19;159:20;160:9, 12
amounts (3) 23:12;29:19;66:4	around (6) 28:24;30:14;49:16; 71:8;95:24;109:12	audible (1) 105:9	based (25) 5:14;41:3;44:24; 50:24;55:11,15;57:8; 58:13;68:25;69:7; 80:16;85:13;87:8; 89:22;90:2;99:13; 115:17;116:6,19; 128:21;147:15,19; 156:20;157:17; 161:24	big (1) 106:13
anew (1) 86:21	articulately (2) 57:2,10	August (19) 16:8;48:1,6,12,15; 50:20,22;52:23;53:6; 8:64;25;73:21;153:7; 8:154:3,9;155:21,21, 22	Basicallly (4) 77:17;84:1;97:3; 133:23	binder (5) 17:15,24;108:12; 138:11;144:10
answered (1) 120:3	articulating (1) 66:16	authenticity (2) 56:3;59:20	basis (6) 9:2;57:2;60:21; 61:7,10;83:14	bit (12) 9:18;24:10;30:14; 33:25;34:1;36:21; 49:8;83:22;154:7,18; 163:11,13
anticipated (1) 36:22	aspects (2) 38:5,7	authorize (3) 95:14;106:19,22	became (5) 30:15;93:14;123:6; 143:8;144:24	blah (12) 41:18,19,19;42:3,3, 4,7,8,8,8,8,9
anticipates (2) 146:11;163:10	assigns (1) 39:12	authorized (5) 31:7;113:23;114:5, 23;144:4	become (1) 93:23	blank (1) 23:7
anymore (1) 119:13	assistance (1) 160:23	available (3) 22:9,11;146:9	becomes (1) 146:9	blow (2) 48:24,24
apiece (1) 135:8	assistant (1) 93:15	avoid (2) 5:17;29:7	beforehand (1) 85:10	blue (5) 124:18,20;125:13, 25;126:3
apologies (3) 15:7;18:4;23:9	assume (5) 69:7;100:16; 104:18;116:21;131:4	aware (3) 32:23;92:2;110:9	beg (1) 74:18	Board (8) 56:16;71:24;99:2; 109:18;116:2;119:24; 162:16,24
apologize (2) 78:19;80:20	assumed (2) 115:25;119:23	away (2) 22:7;54:5	begin (1) 3:1	Bob (2) 29:9;135:6
Apparently (3) 48:22;50:19;160:22	assumes (1) 24:17	awful (1) 41:11	beginning (4) 3:9;93:12;94:2; 154:2	bones (1) 88:23
appear (3) 17:18;21:21;79:24	assuming (3) 50:13;85:14;88:5	awkward (3) 6:3,4;101:3	behalf (15) 3:12;13:22;23:3,4, 6;37:17;39:11,12; 42:22;44:13,13; 114:6,24;120:21; 122:15	booked (1) 91:18
appearances (1) 3:9	assumption (1) 144:25	B	behaved (1) 91:9	booklet (1) 17:19
appears (8) 20:22;39:23;82:3; 138:5;143:25;155:7, 20;163:17	assurances (1) 96:12		behind (1) 160:23	both (12) 9:10,10;21:21;29:7; 72:15;96:1,9,13;97:9; 130:7;133:13;159:23
Applied (1) 93:16	assure (1) 163:11	back (50) 5:18;17:6;21:3; 29:21,22;30:19; 32:17;35:8;39:2; 48:23;49:9,14;52:20; 54:25;58:2;65:24; 69:23;70:15;71:12, 22;72:5,6;73:23;84:8, 10;91:21;92:16; 95:18;96:24,25; 107:15;111:9;115:15; 121:17;122:16; 130:17;133:16,20; 134:11,18,25;135:12, 20;136:22,23;144:10; 153:7,9;161:15; 163:23	Behnken (6) 11:15;17:23;92:17; 163:24;164:11,17	bottom (5) 27:24;28:16;36:7; 49:12;86:9
applies (1) 117:11	assured (1) 114:8	background (1) 18:16	Behnken's (1) 80:22	bought (1) 123:7
apply (3) 7:8;8:25;41:15	Astronautics (1) 93:17	bad (2) 73:21;122:9	belief (1) 157:8	bound (2) 31:3;142:2
appreciate (6) 23:25;28:24;58:1; 62:23;148:2;157:23	attached (5) 14:25;15:3;17:18; 83:16;103:16	balances (1) 135:24	below (9) 28:5;33:4,15;34:11, 24;48:19;74:8,8; 144:3	boundaries (2) 130:6,9
approach (5) 81:24;108:15; 125:2;127:13;144:9	attaching (1) 36:19	ball (1) 140:5	beside (1) 77:7	bounds (1) 130:15
approached (1) 129:24	attachment (3) 83:16,21;84:1	Bankruptcy (17) 3:2;19:4;24:18; 25:5;27:12;29:25;	best (11)	box (6) 6:6;7:2;8:12;11:11; 128:25;147:25
approaching (1) 99:7	attempt (2) 114:14;132:19			boy (2) 36:14,15
appropriate (3) 40:6,7;111:23	attempting (1) 112:21			brand (1)
approximately (2) 18:22;94:20	attempts (1) 127:1			
arbitration (1) 29:3	attention (15) 21:19;22:15;24:21; 31:4;32:10;36:12; 37:5;50:2,17;54:15; 84:9,19,25;85:1;86:6			
area (4) 19:4;89:2;130:18; 146:12	attorney (7) 38:2;90:14;99:9; 110:11;117:7,16;			
arguably (1) 51:11				

TAGNETICS, INC.

October 18, 2019

140:22 breach (2) 66:24;67:1 break (7) 11:17;91:3,5,10,14, 15;92:21 breaking (1) 128:8 brief (15) 4:14;14:20,22,22, 25;15:7;54:25;92:9, 13;93:13;148:10; 158:9,10,15;162:8 briefly (1) 156:9 bring (7) 31:3;45:19;66:17; 69:22;142:25;143:4,7 brother (2) 127:24;128:9 brought (7) 68:24;69:8;96:3; 142:4,6;149:15,16 bucket (1) 135:25 bunch (3) 30:11;146:3,7 business (3) 19:1;99:9;147:2 buyer's (2) 52:11;77:23 buying (2) 41:10;146:7	149:8 camera (1) 80:13 can (111) 5:24;6:13,23,25; 7:24,25;8:1,2,2,11,11, 16,19;10:6;11:6,13, 17;12:11,21,21,22,23, 25;13:8,9,19;18:16; 19:23;20:14,17,17; 21:2,20,23;22:25; 23:11;25:2;33:11; 35:7;36:15;41:2; 47:22,24;49:5;50:4; 52:14,19;54:6,17; 55:24;56:8;57:21,24; 59:2,10,21;60:24; 62:11;63:15;67:11, 24;70:3,11;74:4;77:6, 10;78:10,23,25;79:1, 6;81:24;83:15,21,23; 84:1;85:23;92:3,16, 17,18,18;101:12,13, 18;106:12;107:6,11, 19,25;108:9;109:9; 110:18;119:1;120:7, 17;121:14;125:10; 129:1,15,15,17; 132:12;133:24; 135:13;138:24;144:9; 146:23;147:9;163:11; 164:4 cancel (3) 61:24;96:11;161:13 canceled (1) 137:17 capability (1) 146:20 capacity (1) 122:17 capitalized (1) 160:9 capitals (2) 77:4,6 caps (2) 15:8;36:9 capture (3) 88:18,24;89:13 captured (3) 88:2;89:9,16 captures (1) 33:24 car (1) 91:24 career (5) 18:24;42:22;43:3; 64:9;87:21 careful (2) 51:25;52:4 carefully (1) 84:25 carries (1) 28:18	carry (1) 159:10 carve- (9) 41:1,22;63:15; 64:15,22;68:20;69:5; 117:3;161:24 carve-out (28) 38:23;40:12,24; 41:12,14,17,23;42:15; 44:1,4,7,22;45:22,22; 63:23;64:4,6,10,19; 70:14;96:23;97:1,2,4; 112:9;159:21;160:13; 161:21 carve-outs (36) 14:16,18;15:12; 31:10,15;32:5;33:21; 45:23;49:4,7,10,24; 51:14;52:10;63:21; 64:13;69:9,25;71:6, 17,20;89:17;96:22; 97:10;112:17;115:23; 116:7,10,20;117:9,13, 23;122:12,22;159:17; 160:14 Case (52) 3:7;5:7,20,20,23; 6:5;7:10;12:19,21; 13:3,3,7,11;18:14; 19:16;22:21,24;37:9, 11;42:25;43:4,11; 44:2;46:15;47:2; 55:15;64:1;65:15; 68:2,8;72:3;85:2,4; 90:17;92:25;93:4; 100:7;101:4;120:12; 125:1;129:5,18; 131:9,19,24;132:5,8; 133:15;141:24;148:4; 155:14;162:23 cases (12) 5:22,25,25;6:24,25; 7:1,3,8;5:12;19; 19:10;93:2;158:3 cash (24) 16:13;62:16;63:5; 74:9;130:16,18; 133:13;137:13; 140:18;144:22,23,23, 23,24,24;145:22; 146:9,9,21;147:5; 148:21,22;149:1,7 cash-strapped (1) 26:4 catch (2) 91:14,23 category (1) 133:1 caveat (2) 68:8;164:5 CC (1) 22:21 CCs (1)	25:13 Center (1) 93:16 CEO (2) 31:6;37:16 certain (5) 23:11;31:1,22; 88:17;126:25 certainly (7) 30:16;52:2;78:15; 89:16;124:23;127:25; 161:20 certificates (3) 89:11,19;146:22 CFO (2) 54:20,22 chairman (3) 47:1;93:24;99:2 chance (12) 26:19;85:19;96:16; 100:3;111:13;134:12, 12,13,14;139:3,12; 140:8 change (6) 23:14;52:12;56:21; 94:17;132:23;151:1 changed (2) 145:24;151:7 changes (4) 96:14;97:10; 151:10;161:25 changing (1) 51:5 characterization (1) 111:19 characterize (1) 65:23 chart (13) 14:23;25:18,22; 28:4,11,17;33:18; 35:25;65:4;143:8,11; 145:19,20 charts (2) 61:13;76:23 chosen (1) 30:1 chronological (1) 154:15 Cincinnati (3) 91:19,22;92:6 claim (6) 29:19;30:2;111:23; 134:3,7;160:17 claims (15) 29:9;31:19;33:22; 41:21;44:24;45:1,5,5, 7;66:15,16;67:13; 77:23;122:5;150:11 clarification (3) 7:24;39:1;74:19 clarify (6) 12:17;13:11;34:23; 70:3;112:21;114:13	clarity (1) 96:25 clause (1) 51:3 clean (2) 99:19;103:5 clear (21) 24:13;31:21;64:5; 65:20;97:18;98:4; 109:15;118:4,5,10,17; 119:4,7;136:19; 144:19;152:18,19; 156:13;159:7;160:2; 161:10 clearer (1) 110:15 clearly (15) 13:25;14:3,13;33:3; 48:19,25;49:3,17; 52:3;109:1;118:8; 120:18;136:17; 146:19;163:3 CLERK (26) 3:2,19;12:4,7,9,12, 15;18:2,6,10;58:4,7; 82:2,10,13;91:1; 92:20,22;93:8;108:9; 129:1,9;148:11; 158:7;164:19;165:9 Clerk's (2) 82:5,8 Cleveland (1) 3:15 client (9) 31:5;32:7,7;61:20; 69:21;71:4,4;136:16; 162:20 client's (1) 31:3 close (6) 84:9,19,25;130:15; 136:3;149:19 closed (1) 30:23 closely (1) 154:7 closer (2) 133:22;136:4 closing (8) 9:4;136:5;158:9,9, 15;161:8;162:4,7 co- (1) 22:22 co-counsel (3) 22:24;54:1,11 cognizant (1) 149:19 collaboration (1) 50:16 colleague (1) 154:11 colleagues (1) 66:17
--	---	--	--	---

TAGNETICS, INC.

October 18, 2019

collectively (1) 39:22	5:20	14:7;34:14;96:2	149:3	3:9;15;8:14;15:15;
combination (2) 23:15;84:16	comply (1) 84:12	confirming (8) 32:18;20;33:5;	Continuing (1) 27:7	18:24;22:23;24:24;
commend (2) 165:4,5	composite (1) 10:12	35:18;23;49:20;52:7,	contract (6) 66:14,24;67:2;	25:3;29:10;25;37:25;
comment (1) 109:6	comprehend (1) 118:9	8	103:5;142:1;147:12	45:15;105:25;106:5,
commercial (3) 19:1;91:6,7	compromising (1) 149:4	confuse (1) 114:14	contracts (6) 29:4;40:8;94:5;	16,19,22;121:6;
committed (2) 36:23;97:14	computer (3) 137:3,8;158:6	confused (1) 102:15	99:1;108:5;157:5	160:22,23
common (1) 73:14	concept (8) 32:4;75:8;88:19;	confusion (4) 14:20;15:5;35:23;	contractually (1) 94:21	counter (12) 26:20;28:3,13;76:2,
communicate (12) 22:9,13;114:22;	112:23;113:1;141:17;	76:17	contraption (1) 20:13	5,8,9;85:20,21;140:7,
115:2,7,10;123:25;	142:4,6	congratulate (1) 165:4	contrary (3) 30:1;116:17;159:6	13,17
124:7,10;126:7,23;	concepts (1) 87:23	connection (1) 19:21	contrast (1) 42:13	counteroffer (5) 27:4;86:20;130:17;
164:17	concern (3) 52:24;69:19;70:20	conscious (1) 7:13	contrasting (1) 42:12	134:13;140:11
communicated (5) 14:9;52:5;107:6;	concerned (3) 56:9;85:3;142:15	consequently (1) 98:9	control (1) 146:4	counteroffers (1) 20:9
114:17;124:2	concerning (4) 59:1;94:5;95:19;	consider (4) 27:5;47:10;61:19;	controlling (1) 39:14	counterproductive (1) 30:1
communicating (3) 20:3,23;22:13	98:23	134:16	conversation (10) 22:2;50:25;70:2,4,	couple (3) 87:6;94:15;127:1
communication (4) 21:6;23:2;25:10;	concerns (12) 14:13;30:25;31:18;	consideration (4) 27:6;39:10;44:12;	6,8;72:7;95:21;98:24;	coupled (1) 47:15
97:20	50:8,24;51:1;72:4,5;	56:23	135:11	course (7) 4:23;29:17;64:9;
communications (3) 22:3;51:23;52:1	85:5;87:18;130:13;	considered (3) 74:10,11;116:12	conversations (7) 21:12,15;95:18;	99:5;120:10;134:4;
companies (5) 39:16;44:14;99:2,3;	151:11	considering (1) 76:20	132:18;133:14;135:1;	136:3
121:8	concerted (1) 151:16	consistent (5) 87:24;157:2;160:4,	143:6	Court (302) 3:3,8,13,17,22,24;
company (41) 26:4;27:6,13;29:5,	concession (1) 72:8	6;161:3	convincing (1) 41:11	4:1,12,16,18;5:1,5;
12,19;31:1,6,12,19,	concise (6) 118:4,6,11,17;	constitute (2) 6:22;88:21	copied (5) 14:23;22:3;34:21,	6:22;7:9,16;8:1,11,
23;42:23;47:1;55:14;	119:4,7	constitutes (1) 51:21	22;81:7	23;9:10,11;10:15,21,
56:15,17;93:21,24,25;	concludes (1) 158:3	consulting (2) 117:7,16	copies (3) 8:14;9:14;79:13	23;11:3,9;12:6,10,12,
94:1,4;95:1;109:18;	conclusion (1) 162:18	contact (2) 56:20;164:19	copy (12) 35:6,21;48:1,5;	15,17;13:6,14,17,22;
115:24,25;116:6,11,	conclusive (1) 150:16	contains (1) 15:4	52:23;53:7;79:6,10;	14:9;15:6;16:1,5,18,
14;123:4,12;124:4;	conditions (10) 28:12;53:10;63:5,7;	contents (1) 156:15	80:14;117:21,24;	25;17:3,6,13,16,22;
133:11,14,23;135:25;	88:15;95:21;96:15;	contesting (1) 110:22	152:1	18:1;22:25;24:5;
145:23,24;146:5,18;	98:22;130:21;161:25	context (10) 64:5,15,16,18;	copying (1) 81:2	27:12;29:2,4;32:18,
147:4;148:21	conduct (4) 5:8,11,13,15	71:19,20;72:1;97:5;	Core (2) 66:5;75:12	20;33:7,9;34:7;35:9,
company's (3) 29:1,21;32:1	conducted (2) 55:8,8	161:23;162:12	corner (1) 126:15	15;36:25;40:9,19;
comparison (1) 84:4	confer (1) 154:24	contexts (1) 161:22	corporate (7) 39:13,17;44:14,19;	41:7,10,24;42:2,11,
Compass (32) 38:15,24;39:3,18;	conference (7) 36:24;94:11;95:11;	contingencies (1) 26:11	55:13;121:8,23	17;45:16,21,25;
40:22,23;41:1,12,15,	97:17;98:9,14;136:7	contingent (1) 26:10	correcting (1) 76:23	46:21;47:3,5,7,20;
17,19,22;42:3;43:4,6,	conferring (2) 54:10;58:19	continuation (1) 140:22	correctly (7) 53:5;76:9;102:13;	52:6;53:17,20,24;
12,13;44:21;51:13,	confirm (4) 33:24;35:16;82:22;	continue (3) 26:12;117:15;	107:1;139:6;142:3;	54:3,13;55:11,20,23;
15;55:3,15;56:16;	158:15	155:11	152:12	56:11,24;57:6,8,17,
119:11,17,20;120:1,5;	confirmation (3) 34:12,20;76:13	continued (1)	correspondence (2) 151:2;157:11	23;58:2,4,7,9,23;59:2,
121:10,16,19,23	confirmed (3)		costs (1) 29:13	10,14,24;60:4,6,6,8,
complete (3) 5:19;66:22;69:18			counsel (20)	13;67:6,9,14,17,20,
completed (1) 61:23				23;68:12,15,18;70:5,
completely (5) 26:16;30:25;137:4;				11;77:16;78:8,12;
142:16;147:12				79:6,10,13,18,21;
completes (1)				80:5,12,17,18;81:3,4,
				6,14,17,21,22;82:1,6,
				7,10,13,15,20;83:1,6,
				8;85:20;86:2,24;87:2,
				4,6;88:4;89:1,20,21,
				24;90:1,5,7,9,13,19,
				24;91:2,5,25;92:2,4,
				10,15,17,22,24;93:7,
				96:9;100:2,5,10,14,
				20,22;101:3,6,9,12,
				13,17,22,25;102:3,6,
				8,11,22;103:6,9,12,
				14,22;104:2,6,11,15,

TAGNETICS, INC.

October 18, 2019

18,21,24;105:11; 108:14,18;109:23; 110:1;113:15;114:19; 118:22,25;125:3; 127:14;128:15,18,20, 24;129:4,8,17;131:1, 8,11,14,17,17,22; 132:1,4,7;136:5,11, 25;137:9,24;138:4, 20;139:16;144:8,11, 13;145:5,8,11,13,17; 146:12,15;147:14,18, 22,24;148:2,7;149:19, 20;151:1,6,18,24; 152:2,7,8,19,23; 153:24;155:1,7,16,16, 25;156:4,7,19,23; 157:6,16,20,23;158:2, 5,8,19,22,24;159:2,4, 11;160:25;161:7; 162:1,3,6;163:9,9; 164:22,25;165:6,9 courtroom (3) 6:2;11:21;165:3 courts (1) 19:2 Court's (5) 9:16,22;84:12; 147:15;157:17 cover (7) 17:8,9;36:17;53:24; 58:15;78:10;85:24 covered (1) 89:19 craziness (1) 95:18 crazy (1) 134:6 creates (1) 6:3 Creditors (52) 4:5;5:1,10,21; 10:24;11:16,18;12:8; 14:6,17;15:10,15; 16:7,10,12;19:22; 20:7,20;21:13;22:22; 25:9;26:15;27:20; 28:7,12;30:4;31:13, 19;32:5;37:4,7,11,12, 14,19;38:22;39:3; 40:16;43:17;51:24; 54:5;55:23;58:18; 70:16;87:19;88:16; 89:2;94:6;146:10; 158:21;159:7;164:23 Creditors' (11) 12:19;20:21;82:18, 19;93:2;104:7,12,13; 155:17;156:1,2 critical (1) 113:19 cross (2) 59:8,10	cross- (4) 57:13;59:18; 104:21;156:7 cross-examination (11) 5:11,16;60:14,18; 78:16;105:1;128:22; 131:2;138:7;144:15; 156:10 cross-examine (7) 59:11,16;60:15; 68:9;82:16;100:16; 138:5 crossing (1) 163:16 culmination (1) 148:17 current (6) 39:16,19;44:13,16; 116:3;145:24 cut (12) 27:4;85:18,19; 86:11,17;111:18,19; 112:1;134:20,21; 139:8,21 cuts (1) 153:5 cutting (1) 139:6 D Dan (5) 124:10,17,20; 127:2,19 Daniel (6) 125:8,25;126:3,4; 127:4;128:4 danieljwhite@msncom (2) 126:8,20 date (17) 19:23;21:16;36:23; 47:8,15;71:13;77:25; 89:16;97:24;99:8,20; 100:2;106:21;116:13; 127:11;163:25; 164:12 dated (6) 8:17;28:16;86:10; 125:7;126:13;127:22 dates (2) 47:9;73:21 day (22) 3:4;4:24;20:12; 21:16,25;22:1,8; 25:24;27:2,21;29:15; 30:9,10;33:22;50:12; 68:5;77:5;78:5; 106:14,15;112:19; 151:8 days (5) 33:14;94:15;95:17; 134:3;164:2 Dayton (2)	91:20;164:6 deadline (2) 72:18;98:15 deal (6) 24:11,14;30:23; 38:5;45:3;139:24 dealings (1) 122:3 deals (1) 38:7 Debtor (1) 13:23 debts (1) 151:14 December (1) 18:20 deceptive (1) 112:8 decided (3) 51:18;132:18;147:5 decision (8) 163:10,15,20,25; 164:3,9,13;165:8 decisions (5) 7:14;163:12,13,14, 18 declaration (1) 54:19 declarative (1) 107:18 deemed (1) 55:16 default (13) 49:12,17;63:9;75:8; 108:25;109:5,8,9; 110:8,10,13,17,18 defendants (1) 134:7 deferred (1) 66:6 defies (1) 159:16 defined (3) 55:13;64:16;113:4 definitely (1) 19:12 definition (10) 63:23;87:17,20,20; 88:6,12;97:2,4,5; 157:1 defy (1) 159:13 delay (3) 33:25;34:1;100:1 deliberate (2) 30:22;32:25 demand (8) 23:24;26:2;62:20, 24;74:12,17,21;75:19 133:5 demands (6) 20:7;21:3;23:10,16,	16;77:25 demonstrate (2) 55:5;109:11 demonstrated (1) 150:14 Department (1) 93:17 describe (8) 8:13;22:25;52:14; 61:6;63:24;88:24; 112:21;139:5 described (5) 34:13,25;39:11; 44:12;130:10 describes (1) 88:13 describing (2) 138:25;139:1 description (6) 78:3;88:2;111:20, 24;112:18;160:5 despite (1) 31:13 DET (2) 123:5,8 detail (1) 49:9 details (3) 87:13;88:19,20 determine (1) 95:7 determined (1) 58:13 dictated (1) 32:5 dictionary (1) 64:20 difference (2) 16:15;36:2 differences (2) 36:2;98:25 different (14) 9:14;16:20;28:5; 40:1;53:9;81:23; 90:13,15;92:18; 147:13;156:24; 161:22,22;164:7 difficult (2) 11:21;154:8 difficulties (1) 22:12 digest (2) 163:20;164:3 diluted (1) 157:14 dire (1) 108:4 direct (11) 5:10;18:11;58:10; 77:19;78:16;93:11; 100:17;104:19; 129:12;132:10; 148:14	Directing (10) 21:19;22:15;24:21; 32:10;36:12;37:5; 50:2,17;54:15;86:6 directive (1) 84:12 directly (1) 87:22 director (6) 56:15;93:15,25; 94:3;122:13,23 directors (5) 39:20;41:18;44:16; 56:16;122:8 disadvantage (2) 7:13;154:18 disagree (1) 74:19 disagreed (2) 71:13;74:20 disagreement (4) 69:4;71:21;99:5; 149:16 disappointed (1) 137:20 discharges (1) 39:15 discovery (1) 125:1 discuss (12) 51:8;57:24;69:21; 71:3;98:15;99:6; 128:3;130:6;134:5; 142:19;143:9;151:10 discussed (29) 21:22;33:24;51:2,5, 12;63:4;72:13,13; 75:7,8,9;85:12,15; 87:13;88:20;96:14; 105:19;107:9;114:7, 7;119:24;130:22; 141:6;142:18;143:19; 150:22;151:22; 152:13;161:23 discussing (10) 34:7;69:4;71:21; 75:11;108:3;113:14, 15;141:17;142:24; 143:8 discussion (20) 24:4;31:17;49:16, 21;54:4;63:2,9;65:13; 69:10;71:10,19; 72:14;80:24;89:12; 114:11;136:14; 142:23;162:9,17,18 discussions (24) 11:9;15:13;19:20, 25;20:4,6,10;22:4; 31:6,16;48:17;49:11; 50:14;63:11;69:1; 85:8,19;86:12,12,19; 111:21;132:18;142:5;
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TAGNETICS, INC.

October 18, 2019

149:14 disguise (1) 161:21 dishonest (1) 45:4 dismissal (1) 51:5 Dismissal/withdrawal (1) 33:21 dismissed (1) 65:2 dismissing (1) 134:3 dispute (1) 56:3 disputed (1) 95:4 disputing (1) 94:18 distinction (1) 42:14 distinctly (1) 30:8 distributions (1) 66:23 District (1) 3:3 dividends (2) 66:21;89:15 docket (1) 3:7 document (24) 8:18;10:3;47:24; 62:10;66:7;79:25; 80:6;13;18;81:8,14; 82:8;97:8;99:17; 107:10;10;108:7; 118:1,3,5,11,16; 119:4,8 documented (5) 33:10;34:9;73:18; 113:17;144:3 documents (8) 59:6;99:11,14,23; 101:9;103:7,14,24 dollar (1) 66:4 done (19) 7:19;8:19;9:3;43:3; 22:67:5;86:18;97:15; 99:21;100:16;103:25; 104:18;123:23;127:9; 128:19;139:19,24; 162:25;163:14 donnas (1) 91:7 door (1) 20:2 dotting (1) 163:16 down (10) 27:7;63:9;89:25; 94:11;101:17,17;	114:11;134:15; 136:20;149:3 DR (80) 3:21;5:3;6:21;7:6; 15,22;8:9,22;13:5,13; 16:23;17:2;40:4; 45:10,18;46:22,25; 56:9,13;57:21;58:1; 59:4;60:16,19,25; 61:4;67:3,5,16,19; 87:1;90:4;92:5,9,13; 93:5,10,12;100:8,12, 25;101:2,8,15,19; 103:1,10,13,15,24; 104:5,17,20;108:17, 19;109:25;114:18; 117:20;118:19,24; 119:7;126:18;127:22; 128:19,23;129:1,3,6, 13,20;130:24;131:20, 25;132:3,6;138:13; 147:21;148:18;161:9; 164:24 draft (30) 36:19;38:15;43:14; 50:6;65:13;67:10; 73:8;78:7;85:6,9; 87:14;88:9;97:14; 98:6,23;99:10;103:3; 118:12;149:23;150:5, 6,8,18,20,20,23; 151:7;154:4;157:3; 163:5 drafted (7) 37:1;40:14;42:22; 54:19,22;65:25;160:4 drafting (1) 129:21 drag (1) 133:19 drawing (1) 23:7 drive (1) 137:5 driving (2) 30:10;32:7 due (2) 94:21;97:5 duplicate (1) 9:18 uplicative (2) 9:13;10:2 during (16) 4:23;6:10;21:12; 95:18;98:15;107:7; 116:22;123:13,19; 139:1,2;142:3,4,23; 143:6;146:2 duty (1) 31:3 duty-bound (1) 69:20	E Earley (146) 3:23,23,24;4:5;5:4; 12:20,22,24;13:7,8; 16:3,6,19,21;20:1; 21:18,23;6,12,21; 25:12;26:17,22; 27:23;28:14,16; 30:16,17,18;32:15; 34:2,5,7,35;22;36:18; 47:3,4;48:1,6;50:7,19, 25;52:23;53:8;57:3,5, 18;60:1,3;61:11,12; 65:1;67:20,22;68:9, 11,22;69:11,13; 70:21;75:13,21;76:1; 85:18;86:10;87:2,3; 90:5,6;93:23;95:12, 14;96:1,8,13;97:9; 100:18,23;101:1,5; 102:9,19,25;103:8; 105:16;107:22;111:3, 10,19;112:5;113:12, 13,14,16;114:8; 123:20;124:6;129:7, 11,12,14,19;131:2,5, 8,10,16;132:7,9,10, 11;136:13;137:25; 138:2,5,7,9,15,21,24; 144:1,13,16,17;145:5, 7,12,16,21;146:14,19; 147:14,19,20,24; 148:1,3,5,7,25; 151:23;157:19,20,22; 158:4;162:4,5 Earley's (9) 13:3;17:1;27:1; 65:1,5;66:2,10; 111:12;160:5 earlier (23) 21:8,20,25;35:3; 36:1;37:9;42:13;48:4; 49:14;52:4;53:3; 58:23;77:22;106:25; 116:1;120:12;123:3, 14;141:16;151:22; 153:6,6,10 early (6) 18:23;30:13;34:8; 39:8;106:14;124:21 earnest (2) 20:11;112:4 ease (1) 9:21 easier (3) 9:12,18;11:23 edit (1) 98:23 effect (6) 5:23;6:6,16;12:2, 19;146:16	effective (1) 100:1 effort (2) 151:12,16 either (10) 17:19;19:13;21:25; 43:14;61:11;66:8; 153:7;157:20;159:20; 161:14 elaborated (1) 73:19 electronically (1) 80:10 elements (1) 38:13 elicit (2) 8:6;68:2 elicited (2) 9:7;68:7 else (4) 42:6;75:18;156:4; 164:14 else's (2) 13:11;68:8 email (244) 8:17;9:11,24,25; 14:1,5,21,23;15:5,8; 20:2,19,25,25;22:2,3, 5,10,16;23:1,11,19, 21,23;25:1,7,12,12, 16,17,19,21,24;26:13, 14,16,18,22;27:2,20, 23;28:13,16,21,23; 30:4,6,6,7;31:9,11; 32:16,20;33:3,19; 34:5,11,13,16,21,22, 24;35:2,14,17,19; 36:16,18;37:3;41:5; 42:5;47:25;48:2,4,8, 15,20;49:1,15;50:7, 20;52:21,22;53:2,6; 60:20;61:8,11,12,15, 16,17;63:4,8,13; 64:11;65:5,6;73:13, 15;75:11,22,24,25; 76:7,8,16;77:8;78:22; 80:23;82:17,21;83:6, 11,17;84:20;85:13, 17;86:9,14,15;94:13, 15;96:16,20;97:13; 101:19;102:14,15,16; 103:16;105:4,5,12,18, 22;106:6,6,10;107:2, 8,11,12,14;109:3; 110:13,16,21,24; 111:2,10,12,16;112:4; 113:12,21,25;114:24; 115:3,4,10,13;116:10; 117:22,22,24;124:18, 18,19,20,25;125:5,7, 9,12,14,17,22,24; 126:2,4,6,8,11,13,17, 24;127:10,16,20,21;	132:22;133:25; 134:25;138:25;139:2, 8,10,13;140:7,12,13, 17,19,24;141:1,1,2,4, 7,10;143:2,9,15,16, 24;144:18;150:4,13, 16;152:5,12,14,20,24; 153:8,14,22;154:9,9, 22,22;155:18;156:16; 157:4;159:7,9,18; 160:3,4,21;161:4; 164:18,20 emailed (1) 83:2 emails (40) 9:19;10:13;14:1; 15:14;20:19,21,22; 21:2,8,20;41:3;42:2; 48:23;49:14,19; 50:14;52:7;72:17,18, 19;73:1;76:13,15,21; 79:17;84:8,15; 105:13,15;115:9; 133:13;152:21; 153:10,24;154:14; 155:5,9,20;156:14; 160:1 emphasizing (1) 36:9 employees (2) 39:21;95:1 employment (9) 18:24;69:18;71:23; 109:20;141:23; 147:12;157:4;162:16, 23 encourage (5) 106:4,9;126:7; 127:4,6 encouraged (4) 15:14;24:24; 105:24;130:16 end (11) 25:2;44:8,23;45:8, 24;52:5;81:12; 126:19;162:18;164:9; 165:10 enforce (7) 4:3;8:24;13:24; 19:16;54:18;55:1; 99:8 enforced (1) 161:5 engineering (1) 142:16 enough (2) 118:8;139:17 enrichment (1) 67:2 enter (1) 101:10 entered (4) 46:13;73:15;103:2;
--	--	---	--	---

TAGNETICS, INC.

October 18, 2019

152:17 entertain (1) 53:18 entertained (1) 49:14 entire (5) 22:13;43:3;61:22; 65:17;66:12 entirely (1) 97:4 entirety (5) 65:7;74:16,20; 78:25;83:23 entities (5) 39:14,18;44:15,20; 121:10 entitled (2) 5:15;7:20 entity (5) 42:25;46:25;51:18; 55:13;120:13 enunciate (1) 120:18 enunciating (1) 65:17 equipment (1) 67:1 equity (7) 39:21;44:17;89:3,7; 146:17;147:1;157:10 errands (1) 96:19 especially (1) 149:18 essence (1) 89:17 essentially (4) 27:7;29:18;53:12; 70:14 Even (20) 20:20;24:3;27:15, 21;46:14;47:14; 50:11;84:5;85:13; 96:18;99:20;124:18; 130:15;134:16; 136:18;150:23;151:6, 9;160:5,7 evening (5) 26:17;96:4,5;114:1, 4 event (22) 15:5;22:9;24:2; 28:10;87:10,11,17; 88:1,7,8,17,21,24; 133:2,11;136:1; 145:20;146:1,5,9; 157:1;160:5 events (2) 50:15;88:13 eventually (3) 35:12;71:14,16 everybody (6) 4:19,21;87:7;	101:25;164:19,25 everybody's (1) 158:3 everyone (1) 22:2 evidence (20) 15:24;16:15;60:11; 68:3,7;90:19,22; 94:17;100:3,13; 101:11;104:14;105:5; 116:16;131:23;148:3; 151:5;153:18;156:3; 157:24 evidenced (1) 43:5 evidentiary (3) 4:2;6:8;9:3 exact (4) 19:23;36:1;96:5; 127:11 exactly (7) 34:3;72:12;86:15; 96:10;113:10;123:22; 164:9 exam (1) 7:19 examination (17) 5:9,10,13;18:11; 58:10;64:17;77:19; 85:25;86:3,4;100:17; 128:21;129:12; 144:14;145:9;156:8, 20 examine (10) 6:24;12:21,24;13:7; 17:12;56:7;57:14; 58:25;59:19;104:22 examining (1) 83:3 example (3) 70:24,24;73:10 examples (1) 66:13 except (6) 15:3;36:2;60:7; 90:20;95:4;158:18 excepting (1) 41:19 exception (6) 19:12;49:3;51:13; 58:15;63:24;159:22 exceptions (6) 15:12,17;49:6; 52:11;63:21;64:14 exchange (7) 32:20;39:10;44:11; 48:20;49:1;85:9; 152:5 exchanged (4) 14:2,11;50:13; 105:18 exchanges (1) 37:3	excluded (2) 10:19;66:6 exclusively (3) 21:17;30:16,17 Excuse (5) 92:5;98:10;114:18; 125:18,20 excused (2) 90:10;128:25 executed (1) 33:14 executive (1) 99:3 exhibit (158) 9:11,15;10:1,7,12, 20;14:25;15:3,21,21, 22;17:17,24;20:14, 18;21:7,19;23:20; 26:25;27:17,24; 32:11;34:15;35:6,7, 20;36:13,25;37:6,9, 17;38:20;39:1,5;40:3; 43:17,25;44:10;46:2, 6,7,10,12,18;47:8,9, 16,22;48:7,12,16; 49:15;50:2,18;52:17, 17;53:4,24;54:12,15; 56:11,25;57:2,9,15, 16;58:12;60:1,8,24, 25;61:1,2,17,17; 62:12,12,13;64:12; 65:5,11;66:11;76:17; 77:10;78:13;79:8,9, 16,20,24;80:4,6,11, 12;82:18;86:6;87:16; 101:1,1,15,18,19,23, 24;102:1,3,4,5,6,9,12, 14,15,17,19,23,24; 103:2,2,3,4;105:4; 108:12,19,22,23; 110:24;111:4,12; 118:7,11,12,17;119:3; 120:7;121:1;122:18, 19;132:14;138:24; 143:16,24;151:21,24; 153:1,1,1,11;154:1,5; 155:8,17;156:1,2; 158:18;160:10,10; 161:3 exhibits (73) 8:10,12,15,20,21; 9:8,9,13,17;10:2,12; 14:25;15:1,2,2,22; 17:15;19:24;45:17; 47:14;53:23;54:7; 55:21,25;56:2,6,7; 57:17,20;58:11,11,18, 20,24;59:1,5,18,21, 22,25;60:7,9,10; 79:14,25;80:6,16; 81:22;82:20,21; 90:20;100:6,9,10,12, 19;103:1,18;104:3,7,	11,12,13,15;132:1; 137:24;138:15;151:5, 19;156:5;158:16,17; 159:1 expect (5) 95:15;114:13; 146:1;147:3;160:18 expected (5) 96:6,24;118:1,3; 137:14 expecting (3) 78:6;118:13,14 experience (4) 19:17;65:12;72:23; 90:15 explain (8) 6:6;24:3;26:5; 48:17;49:8;53:9; 70:17;107:11 explained (2) 24:9;107:13 explaining (2) 26:11,12 explanation (2) 117:24;118:1 explode (1) 42:4 express (3) 67:2;72:3;94:3 expressed (4) 69:19;70:19;94:13; 99:23 expresses (1) 50:8 extensively (1) 4:6 extent (6) 5:17;9:16,17;42:13; 46:4;78:17 extra (1) 135:17	fair (4) 78:3;88:1,20;89:8 fairly (4) 52:14;74:14;88:12, 23 fall (1) 48:19 falling (1) 161:15 familiar (5) 110:10,14;112:23; 113:1,6 far (6) 73:9;85:2;95:3; 126:17;134:15; 157:14 fast (1) 30:15 favor (2) 78:25;94:22 favorable (1) 47:11 feasible (2) 24:10;26:3 February (4) 125:6;126:6,14,16 fed (1) 81:20 feel (3) 7:12;149:16;163:7 fees (1) 29:13 felt (3) 133:3;137:15,18 Fernandez (3) 54:20;56:13,20 Fernandez's (1) 56:11 few (8) 50:9;54:12,24; 60:16;95:24;119:17; 138:6;164:2 figure (3) 15:11;54:6;133:17 file (5) 81:3,22;127:4; 137:1;158:10 filed (14) 4:3;5:6;7:10;33:22; 56:19;80:6,9,17;81:5, 5;94:7;116:13;128:7; 150:25 files (1) 80:5 filing (9) 47:8,9,15;80:18; 124:15;127:23;128:3, 4;133:16 final (9) 23:5;52:17;61:19; 62:2,3;63:13;72:17; 107:20;132:23 finally (3)
---	--	--	---	--

TAGNETICS, INC.

October 18, 2019

30:21;32:14;96:16 financial (3) 116:3;130:11,22 find (3) 28:2;62:10;138:13 finds (2) 9:12;125:9 fine (18) 10:15,17,21;12:6; 17:16;31:12;32:8; 53:20;54:13;68:18; 104:8,9;108:14,14; 131:8;155:1;158:14; 162:19 fine-tuned (1) 149:17 finish (2) 40:21;92:2 finished (2) 58:9;115:21 firm's (1) 55:11 first (33) 5:8;6:1;18:21;19:7; 20:3;21:15,24;23:11; 24:23;28:1;35:11; 36:16,17;38:17;48:8; 16:52;21,22;61:14; 18:64;8;76:24;79:1; 80:1;93:4;95:9;111:4; 126:17,19;142:11; 145:17;151:8;155:7 five (3) 66:24;96:5;134:2 five- (1) 11:16 five-minute (3) 12:10;57:24;58:2 flat (2) 20:8,9 flat-out (2) 26:16;57:9 flexibility (1) 164:8 flight (3) 91:18,23;92:6 flights (1) 91:13 flipping (1) 48:22 floor (1) 148:8 flurry (1) 72:17 fly (2) 74:5;91:19 focus (6) 84:12;85:3;108:6,9; 141:12;144:20 focused (7) 16:13;130:18,19; 133:12;140:17; 144:24;162:21	follow (6) 9:19;40:25;45:12; 99:4;100:18;144:18 Following (6) 22:1,8;25:24;35:23; 149:14;162:18 follows (3) 64:11;80:2;128:10 follow-up (1) 79:5 foray (1) 19:7 forget (4) 18:19;109:17,17; 138:10 forgive (1) 35:10 forgot (2) 19:23;20:1 form (2) 8:3;60:21 formal (1) 163:15 former (4) 39:16,20;44:14,16 forms (2) 61:6,10 forth (30) 13:25;14:15;15:23; 16:9;21:3;23:15; 24:19;25:15;30:19; 32:16;33:4;34:9,23; 35:8;41:4;48:9,23; 49:1;61:13;75:19; 84:9;91:13;95:19; 113:17;143:17,18,20; 144:2;145:1;151:12 forthright (2) 46:8,11 Fortunately (2) 6:1;22:12 forward (12) 24:2;26:19;27:6,13; 62:24;74:13;93:22; 100:2;111:13;139:14; 140:6;147:6 forwarded (2) 16:9;50:21 found (1) 11:19 founder (2) 93:18;123:4 four (3) 34:25;66:23;162:13 fourth (2) 25:1,6 frame (2) 34:18;164:2 frank (1) 15:16 frankly (7) 27:3;41:9;86:16; 98:19;111:17;113:19;	114:11 fraud (1) 113:8 freedom (1) 69:18 frequently (1) 30:18 Friday (12) 21:1;95:24;96:17; 97:13;98:1;99:18; 136:4,4;150:16; 155:21;161:12;164:1 front (7) 24:8;45:11,17; 124:22;135:5;137:2; 138:15 frustration (1) 132:13 full (58) 3:20;14:16;15:12; 18:6;30:25;31:10,13, 14;32:3;33:20;49:4,6, 9;51:14;52:9;63:20; 64:12;69:13,24,25; 70:20;71:17;72:9,10; 79:1;89:17;112:17, 23;113:1,3,6,10; 115:16,19,22;116:6, 10,20;117:3,9,13,23; 122:11,22;136:15,19; 141:17,21;142:5,7,15, 24;159:17,22;160:13; 162:10,19,24 fully (5) 32:1,2;33:14; 140:17;162:11 funds (5) 61:23;72:24;75:3,4; 95:5 furious (1) 30:15 further (17) 26:12;53:15;55:19; 63:9;67:15,17,19; 75:2;86:1,23;90:23; 99:14;100:1;128:16; 144:7;156:18;159:16 furthermore (1) 75:20 FWIW (1) 127:24	gentleman (1) 37:20 Gentlemen (3) 3:19;12:7;23:18 gets (2) 10:16,17 given (5) 41:16;70:23;94:23; 96:12;141:14 giving (4) 31:12;70:20;99:14; 149:4 glasses (1) 125:19 goals (1) 149:5 goes (8) 17:6;21:7;23:14; 49:8;134:19;153:7,9; 155:20 Goldsmith (1) 124:8 Good (17) 3:11,13,17,22,24; 4:1;13:21;19:1;59:14, 15;63:16;64:3;91:3; 101:25;127:21;143:3; 151:12 goods (1) 66:25 Googled (1) 97:1 graduated (1) 18:19 granted (2) 76:18;88:19 Great (3) 10:24;13:14;112:22 ground (3) 5:18;17:8,9 groundwork (4) 4:19,21;10:7;22:7 group (2) 152:24,25 growing (1) 29:14 guarantee (1) 134:9 guarantees (2) 27:7;29:18 guess (22) 19:24;21:24;48:18; 51:25;59:7;70:9; 72:16;77:21;81:13; 83:25;85:24;95:24; 100:18;148:8,15; 149:21;150:13; 151:11;152:25;162:8, 14;164:17 guidance (1) 160:22 guide (1) 92:18	guidelines (1) 99:14 Guy (1) 3:5 guys (7) 7:17;32:18;67:16; 71:1;84:16;92:12; 95:7 GW (1) 18:19
H				
HAGER (145) 3:25,25;4:1,5;6:16; 12:20,23,23;13:7,9; 14:24;17:4,5;23:8,9, 12,21;34:6,8,16; 35:14,21;36:19;39:8; 47:5,6,25;48:5,9; 50:20;52:22;53:7; 57:6,7,18;59:7,13,23; 60:4,5;65:6,68;13,14, 16,19;70:3,9,12; 77:17,21;78:4,10,19, 21;79:9,12,15;80:1, 13,14,21;81:4,8,11, 24;82:15,25;83:1,5,9, 10;85:23;86:2;87:4,5; 90:7,8;96:2,8,13;97:9, 22;98:19;102:15; 105:16;111:3;112:5; 113:14,16,18;114:5,7, 8,23;115:1,2,7,8,9; 117:21;124:6;130:7; 132:8,17;133:6; 135:1;136:12;143:17, 24;144:1,2;147:22, 23;148:6,8,9,13,14, 15;151:18,21,25; 152:4,13,22,25;154:1, 19;155:9,13;156:6,10, 12,20,22;157:2,11,16, 23,25;158:1;160:1; 162:6,8;163:9 Hager's (4) 13:3;50:8;66:10; 83:3 hand (6) 18:3;108:12; 125:18;133:19; 138:18;140:18 handed (2) 127:17;138:11 hang (1) 129:1 happen (1) 146:11 happened (7) 15:13;19:20;20:5; 30:5;41:20;47:1; 153:3 happens (5)				

TAGNETICS, INC.

October 18, 2019

25:5;146:2,6,6,8 happy (1) 96:23 hard (6) 79:6,10;103:11; 105:10;137:13; 146:23 hardly (1) 109:15 head (1) 42:24 header (1) 79:3 heading (1) 30:9 hear (7) 29:20;32:17;35:9; 95:25;98:2,12;129:2 heard (3) 29:22;98:21;115:14 hearing (8) 4:2,2;91:23;103:11, 25;105:10,11;124:5 hearings (1) 6:4 hearsay (8) 56:25;57:1,3,10,10, 11;58:14,15 heart (1) 52:12 heated (1) 162:17 heirs (1) 39:12 held (1) 146:18 help (1) 124:25 helpful (1) 165:6 helps (1) 129:2 hereby (1) 39:15 herein (2) 39:11;44:12 Here's (1) 75:21 Hi (1) 127:18 high (1) 26:4 himself (2) 23:4;131:5 hire (3) 7:14,14,16 history (2) 94:1,23 Hobart (3) 93:21;123:7,8 Hold (3) 90:1;100:5;101:17 holders (2)	39:21;44:17 home (2) 30:9;151:3 honest (4) 40:21;41:7;46:8,11 honestfly (1) 154:16 Honor (95) 3:11,14;4:13;7:6, 23;8:9,16;10:11;12:4; 13:13,16,21;15:25; 16:6;17:11;40:4,10; 41:6,14;45:10;46:17; 47:19;53:16;54:10; 55:19,22;56:9;57:22; 59:7;60:12;67:3; 77:15;79:12;80:8,15; 81:24;82:4,23;87:14; 89:23,25;90:18,23; 91:1,17;93:5;97:25; 98:10;100:8,18; 101:8;103:11,17; 104:10,23;108:11,16; 109:21;114:16,18; 118:15;119:6;125:2; 127:13;128:13,16,19; 129:6,7;130:24; 131:3,21;138:6; 144:7,10;145:10; 147:17;148:1,9; 153:4;154:6;155:15, 23;156:6,18,22; 157:18,19;158:7,14; 159:3,5;161:6,9; 164:16 Honorable (1) 3:5 hope (1) 125:9 hoped (1) 29:1 hopefully (2) 4:23;91:9 hopes (1) 151:13 hour (3) 27:22;92:7;149:18 hours (1) 95:24 Humphrey (1) 3:5 hundred (2) 108:3;161:22 hurdle (1) 143:14 I idea (1) 135:20 identified (5) 38:20;48:4;52:24; 53:3;80:2	identifies (1) 22:2 identify (11) 8:18;20:17;35:7; 36:15;47:24;50:4; 51:18;52:19;54:17; 79:25;101:13 identifying (2) 10:5;50:23 ignorance (1) 160:17 illegible (1) 81:16 illustrative (2) 66:13;67:13 impact (2) 89:6;157:8 implied (1) 67:2 important (4) 56:22;66:22; 141:20,25 imposes (1) 27:12 impression (1) 112:11 inaccurate (2) 139:7,9 Inc (22) 13:23;37:20;38:16; 39:4,19;43:5,6;44:21; 55:4;119:12,12,21; 120:2,2,9,22;121:11, 16,23;122:14,24; 123:25 incidentally (1) 94:19 include (24) 42:4,5,7,25;43:22; 44:3,22;54:25;63:6; 65:20;107:17;109:9; 110:18;112:14; 116:22;117:4,22; 121:15;130:9;149:22; 150:1;153:24;154:5; 159:15 included (20) 23:17;28:5;31:8; 40:17;43:6;48:19; 49:1,22;76:14;87:20; 95:22;107:2;117:22; 121:7;137:11;143:9; 154:1,11;157:3;159:8 includes (1) 112:6 including (15) 22:22;38:15;39:3, 18;40:23;41:1,12; 44:21;61:23;66:1,14, 19;121:10,18,18 inconsistency (1) 159:23 inconsistent (1)	160:16 Incorporated (1) 3:8 incorporation (1) 76:6 incorrect (1) 150:25 incorrectly (2) 109:13;119:2 Inc's (1) 55:4 indicates (1) 140:21 indicating (1) 61:21 individual (7) 44:6,24;45:1,5,7; 55:13;122:17 individuals (1) 40:8 information (2) 137:12;156:25 initial (12) 24:8;26:3,6,9;28:6; 70:19;133:8,24; 134:1;135:8;144:22; 149:9 initially (1) 130:13 initiate (1) 33:7 ink (2) 80:24;81:11 input (1) 95:20 inside (1) 142:1 insisted (1) 30:24 insisting (1) 24:16 insolvency (1) 100:4 instance (2) 9:20;66:4 instead (5) 33:16;36:4;51:6; 135:5,18 insulting (1) 111:22 insurers (1) 39:22 intellectual (2) 69:17;70:22 intellectually (1) 45:3 intend (2) 16:7;131:9 intended (3) 7:7;88:7;109:10 intentionally (1) 161:14 interest (14)	25:17;39:15;50:10; 51:17;55:4,15;66:19; 75:23;89:4,7;91:5; 99:25;146:18;157:10 interesting (1) 90:11 interpret (2) 34:11;75:18 interpreted (5) 23:4,5;50:15;86:13; 97:10 interpreting (2) 52:13;76:5 into (31) 4:10;5:2;19:7; 34:22;46:13;60:11; 63:2;73:15;76:5;77:7; 78:8;80:10;81:7; 94:13,17;95:20; 100:13;101:10; 104:14;105:4,7; 123:10,11,12,16; 133:1;150:17;151:16; 153:17;156:3;163:12 introduce (9) 8:21;79:14;90:20, 22;100:7;104:16; 131:23;137:25; 151:19 introduced (14) 9:23;10:3;47:14; 68:4,20;94:16;100:6, 11,21,22;138:1; 151:20,22;163:5 introducing (1) 77:24 introduction (3) 38:11;53:18;93:13 inviolate (1) 95:14 involuntary (1) 56:19 involved (9) 22:14,21;29:24; 71:9;76:1;95:5;118:2; 124:4;161:18 involvement (1) 162:23 involving (2) 62:21;120:12 irrelevant (5) 45:13;46:10,12,23; 47:17 I's (1) 163:16 issue (9) 31:17;59:19;68:17; 82:3,19;118:18; 122:1;148:20;157:7 issues (7) 38:22;70:22;81:2; 94:4,5;150:7;151:9 issuing (1)
--	---	---	--	--

TAGNETICS, INC.

October 18, 2019

163:10 Item (2) 51:12;76:24 items (6) 21:22,23;74:1,1,10; 75:16	143:1,9,15,25;146:17; 148:16,18;149:10; 150:14,16,17;152:5, 11,13,20,24;153:21, 22,25;154:2,5,9; 155:5,8,18;156:14,16; 157:4,8,9,12;159:9; 160:2,3;161:24	75:12;135:6 keep (3) 140:5;147:10; 148:10 Ken (11) 23:22;26:1;27:8,10; 29:9,22;125:9; 127:20;134:5;137:8; 155:19 Kenneth (5) 3:21;39:11,14; 93:11;105:1 Kevin (1) 33:3 key (26) 14:4,7,15;15:23; 20:12;21:16;30:23; 31:9,32;16:33;13,24; 34:24,25;35:3,18; 42:6;49:20;52:8;73:1, 3,4,16;117:2;143:17, 18,20 kind (7) 4:19;7:9;78:6,8; 101:3;149:1,4 knew (6) 44:23;45:1;91:8; 95:4;119:19;128:6 knowing (1) 64:5 known (2) 66:13;91:8 Kracht (70) 3:14,14,17,18; 10:11,18,22;17:12; 18:12;40:9,10;41:6,9, 13;42:1,10,12,20; 43:24;46:17,24; 47:19,21;53:15,17,18, 22,25;54:10,14;55:19, 22;58:10;60:12,23; 77:12,14;78:18;79:8, 18,20,23;80:4,8,15; 81:1,10,12,19;82:20, 22;83:7;86:3,5,23,24; 89:22,23;90:16,18,23; 102:2,7;104:22; 147:16;154:12,24; 155:3;156:8;165:5	121:16;161:18 large (2) 24:7;98:18 largely (2) 47:12,17 last (15) 18:25;27:10;28:10; 29:11;30:9;34:24; 35:12;37:16;64:24; 80:2;105:24;120:7, 25;155:22,24 late (1) 91:18 later (22) 25:11;26:17;27:21, 22;31:11;43:16; 50:12;51:20;65:18; 70:4;71:13;77:25; 78:11;85:25;94:7; 96:6;98:5;106:3; 131:6;133:21;160:14, 19 latest (1) 91:19 law (15) 6:23;7:12,18,20,20; 8:8,24,25,25;13:1; 18:19;51:16,20; 55:12,17 laws (1) 147:10 lawyer (8) 7:17;8:7;50:25; 56:20;64:4;96:24; 112:20;121:25 lawyers (11) 6:18,19;7:14,14,18; 13:10;18:13;64:7; 114:13,15;161:17 lay (2) 4:19,20 lays (3) 14:3;25:19;35:25 leading (1) 20:5 learned (1) 14:12 least (12) 16:2;21:4;34:4; 37:15;64:10;65:12; 76:11;91:8;119:12; 120:2;155:8;164:12 leave (5) 91:11;147:25; 158:12;163:22,23 leaves (1) 58:17 leaving (1) 91:18 Lebit (1) 3:15 lectern (8) 6:17;8:6;9:6;11:1,4,	10,23;12:22 led (1) 69:5 left (2) 38:9;82:15 legal (19) 9:7;11:22;40:25; 63:16;64:3;94:4; 105:25;106:4,10,16, 19,22;112:18;117:17; 128:9;146:25;160:21, 23;161:20 legible (1) 82:3 length (1) 91:15 lengthier (1) 11:8 less (3) 27:21;95:2;97:1 letter (10) 61:21;95:3;99:12; 105:20;108:2;130:10, 14,21;132:13,15 license (1) 66:5 licensing (1) 160:16 lie (1) 58:21 lieu (1) 158:11 life (2) 99:1;142:12 light (1) 29:24 likely (1) 38:5 likewise (1) 47:6 limited (7) 29:8;63:12;65:4; 66:15;75:10;144:20; 155:4 line (16) 22:16;24:20;26:2; 28:10;36:7;40:5; 48:18;61:14,18; 98:11,20;126:17,19; 133:23;139:13; 146:10 liquidated (1) 136:1 liquidity (18) 28:10;87:10,11,17; 88:1,7,8,13,21;133:2, 11;136:1;145:20,21, 25;146:5;157:1;160:5 list (5) 7:10;65:17;66:13; 67:12;165:3 listed (3) 74:1;82:2;150:24
J	K	L		
January (10) 124:21,23;125:6,7, 14,15,16,22;126:4,24 jerk (1) 109:12 Jon (16) 3:25;22:11;23:22; 26:1;27:8;29:22;33:3; 50:8;67:16;96:2; 97:21;130:7;133:18; 134:5;136:24;137:8 JONATHAN (2) 148:14;156:10 Joni (4) 35:11;80:22;96:4,6 Jon's (2) 50:11,11 Judge (5) 35:6;61:21;97:25; 118:20;164:6 judgment (13) 49:13,17;63:10; 75:8;108:25;109:5,8, 10;110:8,10,13,17,19 July (155) 8:17,9;11,24,25; 14:3,22,24;16:10,13, 13;21:1,16;22:5,16; 25:6,25;26:22;27:14; 28:16;33:19;35:2,20; 37:4;41:2,5;42:2,5; 48:20;49:1;53:10,13; 60:20,21;61:11,11,17; 62:19;63:13;64:10; 68:22;71:25;72:2,12; 73:13,23,24;75:17; 76:1,5,6,7,11,12,13; 77:8;78:23;80:3;83:4, 12;84:2,6;86:10;89:4, 5;94:9,13;95:3,22; 97:8;99:12;101:20; 102:16;103:19,23; 105:3,12,22;106:7,14; 107:1,13,15;109:3; 110:12,23;111:3,11; 112:5;113:4,13; 114:10,22,24;115:3; 117:21;119:11,16,25; 122:7,11,16;129:22, 25;130:3,10,21; 132:21;133:25; 137:12;139:2,13; 140:8,11,13,19,24; 141:2,4,7;142:5;	Kagan (1) 22:11 Kayser (189) 3:21,21,22;4:5,5,3; 6:16,21;7:6,15,22;8:9, 22;12:20,23,24;13:2, 5,6,13;16:19,23;17:2; 20:1;21:1,16,25; 22:20;23:3,12,21; 34:3,8;35:22;36:18; 37:13,17,24;39:7,11, 14;40:4,6,17,18;43:7, 12,15;44:6,12,23; 45:10,13,15,17,18,20; 46:3,22,24,25;48:1,6; 50:20;52:23;53:7; 56:9,13,24;57:10,18, 21;58:1,22;59:3,4,24; 60:14,16,19,25;61:4; 66:4;67:3,5,16,17,19, 24;68:23;69:12; 70:21;86:25;87:1; 90:1,4,92:5,9,13;93:2, 3,5,10,11,12;100:5,8, 12,25;101:2,8,13,15, 19;103:1,9,10,13,15, 24;104:5,16,17,20,22; 105:1,6;108:17,19; 109:25;112:12; 113:16;114:18; 117:19,20;118:19,24; 119:7;120:8,9,13,22; 121:4;122:3,4,4,15; 126:18;127:22; 128:19,23;129:1,3,4, 6,13,20;130:24;131:1, 18,20,23,25;132:3,5, 6,12,15,16,17;133:6, 19;135:1;138:11,13; 141:2;143:1,17; 144:1;145:1;147:18, 21;148:19,24;156:16; 157:20;161:8,9; 162:3;164:24 Kayser's (6) 39:9;45:7;74:6; 101:4;141:7;149:11 KB (1) 41:4 KBL (10) 27:11;29:10;37:12; 44:5,7,11;45:5,6;	label (2) 57:1;72:19 labeled (2) 102:13;104:3 lack (1) 75:3 language (16) 38:8;39:9,23;43:18, 23;44:9,19,25;46:20; 51:1;66:9;109:15; 113:11;114:12;		

TAGNETICS, INC.

October 18, 2019

lists (2) 28:3;34:25 litigate (1) 162:15 litigation (6) 18:23,25;19:2,10; 29:13;62:21 little (13) 9:18;24:10;25:11; 30:14;36:21;49:8; 83:22;113:19;153:12; 154:7,17;163:13; 164:8 live (3) 109:19;137:18,19 lived (1) 137:22 living (1) 142:17 loan (9) 50:9;51:8;65:1,8, 22;66:2;75:13; 159:19;160:15 loaned (1) 67:1 loans (1) 66:19 logic (4) 28:24;40:13; 159:13,16 long (8) 10:16;31:14;32:8; 91:12;104:8;127:2; 153:22;155:4 longer (3) 36:21;74:10;157:15 long-time (2) 56:14;94:25 look (32) 17:20;25:1;26:19; 27:13;37:16;39:4,5; 43:25;44:8;47:22; 49:14;50:18;52:16; 63:8;65:24;66:9; 81:13,22;86:14; 98:13;100:2;107:15; 15;111:1,13;119:14; 128:6;133:16;134:23; 135:16;139:13; 154:12 looked (3) 52:10;64:19;84:2 looking (18) 8:13,16;14:20;15:6; 26:5;48:23;61:2; 66:11;76:11;81:21; 97:1;111:2;118:24; 125:7;126:25;149:6; 153:13;154:6 looks (9) 22:16;25:25;27:21; 30:7;52:20;80:14; 81:1;153:5,9	lot (7) 18:24;41:11;77:7; 147:5;154:17;162:9; 164:7 lousy (1) 112:20 low (1) 132:12 lower (2) 26:6,7 LTD (7) 37:12,18;44:12; 120:9,13,22;121:4 Luis (3) 54:20;56:13,20 lunch (6) 91:3,5,14,15;92:21, 25 <div style="text-align: center;">M</div> major (1) 146:9 majority (1) 19:9 makes (4) 6:3;13:18;33:8; 164:16 making (13) 11:2,5,8;24:13; 49:12;51:12;56:24; 59:17;77:23;122:4; 133:15;144:25; 154:16 management (1) 135:13 many (11) 19:3,3;32:14;48:18; 87:21;95:18;99:1; 113:9;119:19;151:1,1 March (2) 127:18,22 Marketing (20) 38:16;39:4,19;43:5, 6;44:21;51:13,16; 55:3,16;56:16; 119:11,17,20;120:1,6; 121:10,16,19,23 marks (1) 80:18 material (1) 73:7 math (1) 76:9 matter (5) 23:1;29:14;84:5; 146:8;159:22 matters (6) 4:9,11,11,15;5:2; 30:12 may (60) 3:5,8;5:8,14,25; 7:12;12:16;13:7,17,	21;17:20;20:2;21:15; 31:19;34:2;41:21; 54:3;56:18;58:8; 59:19;65:15;66:17; 68:2,15;70:23;72:4; 78:14;82:14;83:8; 84:22,23;85:17;86:3; 89:25;90:9;92:23; 93:7;104:24;108:11, 15,18;124:8;125:2,3; 127:13,14;128:13,15, 24;129:8;131:3; 138:5,20;142:8; 144:11;147:25;153:4; 159:3,4;164:8 maybe (7) 49:16;61:10;65:14; 69:11;70:10,22;131:4 McCarthy (1) 3:15 mean (19) 34:11;40:5;47:13; 48:18;70:5;74:22; 77:4;81:13;115:23; 123:18;124:5;126:10; 134:14;135:14;140:4; 145:20;152:25; 154:21;161:21 meaning (9) 64:13;69:25;71:18; 97:10;123:10;139:16; 144:3;161:1,22 means (12) 51:14;87:12;113:7; 115:17;117:4;134:12; 144:25;145:21; 150:21;159:12; 160:17;162:25 meant (3) 45:14;112:8;161:25 meat (1) 88:23 meet (2) 149:2,5 meeting (4) 26:19;111:13; 119:24;139:14 memorandum (1) 158:11 mention (3) 43:13;59:8;64:25 mentioned (9) 52:4,6;65:21; 100:19;116:1;141:15; 143:1;149:13,13 met (1) 132:11 microphone (3) 54:5;90:12;105:8 middle (1) 116:23 might (7) 7:9;51:11;88:24; 89:14;91:20;132:20; 142:10 Mike (1) 127:24 mind (4) 51:14;84:5;117:20; 139:6 mine (2) 97:7;127:2 minute (4) 11:17;54:1;116:24; 154:25 minutes (2) 92:8,16 mirror (1) 15:2 mirrored (2) 66:9,10 mirroring (1) 43:18 mirrors (1) 39:10 miscalculating (1) 28:25 misinterpreted (1) 139:10 misleading (3) 112:9;114:12; 161:14 mispronounce (1) 35:12 missed (2) 47:15;80:19 missing (2) 15:5;150:7 misunderstandings (1) 33:2 Mm-hmm (4) 42:1;86:8;140:25; 146:14 modifications (2) 54:23;150:17 modified (3) 102:3;150:22;151:8 modifying (1) 62:9 moment (10) 34:8;39:5;57:21; 69:7;111:10;112:10; 113:15;129:6;134:4; 137:10 momentarily (1) 35:15 moments (1) 35:1 Monday (13) 26:19;29:8;33:9; 97:16,21;111:13; 118:13;136:6;139:14; 140:9;149:23;159:11; 164:11 monetary (26) 21:22;23:10,11,16; 24:8,19;25:20,21; 26:6;31:8;38:5,7; 63:10,12;65:4,7,9; 75:9,25;76:3;77:25; 112:6,14;142:21; 143:1,10 money (12) 27:8,9,10;29:11; 75:10,11;99:11,11; 134:10;135:25; 136:10;146:3 monitor (1) 81:23 months (14) 28:8;33:16,17;36:5, 5;94:7;99:22;133:9; 135:17,19,19,22,23; 151:2 more (30) 6:3;9:19;16:23; 26:2;31:18;33:10; 36:10;47:11;49:9; 52:10,10,21;55:14,16; 70:6,11;73:18,19; 95:2;96:25;105:9; 108:10;109:1;126:23; 131:6;134:19;147:7; 149:7;154:7;155:12 morning (13) 3:7,11,13,17,22,24; 4:1;13:21;25:16; 28:22;30:11;75:22; 136:6 Most (10) 19:12;21:7;29:21; 38:1,5;46:12;48:3; 119:17;130:19;153:1 mostly (1) 105:18 motion (11) 4:3;5:6;13:24;14:2; 15:3,22;17:18;54:18; 55:1;99:8;104:1 motions (1) 19:14 move (9) 8:20;29:12;32:3; 46:7;53:21,22; 108:11;133:3;147:6 moving (2) 55:20;140:5 msncom (1) 127:21 much (13) 11:5;25:11;38:3; 46:6;75:1;90:15;91:9; 92:11;105:17;135:14; 140:18;163:11;164:6 muddling (1) 78:19 multiple (1) 159:13 must (7)
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TAGNETICS, INC.

October 18, 2019

48:22;61:22;91:7; 95:22;107:17;136:23; 162:17 mutual (60) 14:16;15:12;31:10, 14,15;32:4,8;33:20; 49:4,6,9;51:14;52:9; 63:20;64:12,14; 69:25;70:1,20;71:5,8, 17;72:11;89:17; 112:17,24;113:2,3,6, 10;115:16,19,22; 116:7,10,20,21;117:3, 9,13,23;122:12,22; 136:12,13,15;141:17, 21;142:5,7,15,20,22, 24;159:17,22;160:13; 162:10,19,24 myself (1) 68:23	4;116:22 negotiating (13) 45:6,7;97:8;107:10, 22;116:24;117:17,17; 129:25;130:3,7; 135:15;143:21 negotiation (7) 95:6;98:18;116:23; 118:3;148:17;161:17, 19 negotiations (25) 16:11;19:13,22; 21:4;27:4;32:24;38:1, 2;40:15;60:22;61:7; 86:17;107:7;111:18, 20,25;112:1,3;134:15, 21,21;139:7,9,19; 159:12 nevertheless (4) 69:20;71:3;72:6; 153:13 new (13) 25:15;51:2;77:23, 24;85:6,12,15;98:15; 140:22;145:25; 150:11,11;152:1 next (21) 22:15;23:19;25:24; 27:2;28:18,22;30:6; 52:16;53:2,4;63:1,1; 74:18;75:24;81:15; 95:17;102:25;103:1; 139:13;164:1,17 non- (4) 109:21;118:15; 142:20,25 non-compete (1) 51:4 none (3) 6:19;35:1;156:14 non-monetary (21) 21:23;23:15;38:8; 49:21,23;63:14;76:4, 10,14,19;108:24; 109:4,7;110:7,20,23; 112:6,14,16;141:9; 142:22 non-negotiable (1) 107:14 nor (2) 95:15;96:3 normal (1) 99:5 Normally (2) 116:24;154:14 note (2) 10:11;96:9 notes (2) 66:18;74:5 notice (1) 159:8 noticed (1) 127:23	notified (1) 137:9 notifying (1) 136:11 notion (1) 69:11 notwithstanding (1) 159:6 nourishment (1) 91:10 November (1) 18:20 Nowhere (1) 149:9 nuance (1) 120:23 Number (14) 3:7;11:20;14:17; 21:21;22:21;26:7; 28:25,25;34:12,20; 48:9;102:5;147:1; 149:5 numbers (2) 15:9;28:5	occurred (6) 21:6;31:17;41:20; 56:22;70:2;82:23 occurrence (1) 28:9 o'clock (3) 30:14;92:17;96:5 October (2) 3:4;18:20 odd (4) 27:3;86:17;111:18; 154:13 Off (25) 12:13;20:5;27:4; 37:2;42:24;58:5; 80:15;81:2;82:11,15; 85:18,19;86:11,17; 111:18,19;112:1; 128:8;134:20,21; 139:7,8,21;149:12; 153:5 offer (15) 23:5;24:13;25:15, 16;61:20;62:2,3; 75:21;101:21;107:20; 111:22;129:24; 134:13,22;140:7 offered (3) 16:8;26:7;140:13 office (3) 55:8;82:5,9 officer (3) 117:14;122:13,23 officers (5) 39:20;41:18;42:8; 44:17;122:8 often (3) 47:13;70:24;95:17 Ohio (7) 3:3,15;7:21;51:16, 20;55:12,17 old (1) 98:11 once (11) 14:6;16:16;21:16; 34:2;49:22;76:12; 95:10;131:7;132:13; 159:25;160:20 one (93) 8:5,9;9:12;10:12, 16,19;11:14;12:17; 14:19;15:4,4;16:1; 17:16;18:13;20:21; 21:24;22:18;25:1; 30:14,18,20,22,23,23; 31:18;33:22;34:4,12; 36:1;37:13,14,17; 38:13,22;39:2;42:23; 47:11,12;48:3,4; 49:18,19;50:16;52:7, 17;53:4;61:3,9;63:11; 64:24;65:3;66:18; 69:8;70:17,19,24;	75:7;76:23;83:18; 84:16;85:17;87:9,19, 22;88:15;92:17;93:2, 22;96:22;102:20,25; 107:15;109:1;122:8; 126:24;127:10,17; 128:13;129:6;132:8; 135:20;138:25;139:2; 145:19;150:19; 151:25;152:6;155:7, 24;161:9;162:8,8,22 ones (3) 32:6;100:20;158:12 one-sided (1) 72:15 online (1) 127:23 only (36) 9:20;14:11;15:4; 16:13;19:19;20:21; 24:12;27:15;36:2; 38:10;45:6;47:13; 50:22;51:11;62:15; 63:4,10,12;68:17; 75:10,11;89:20; 107:22,23,25;112:16; 127:6;135:25;143:14; 144:17;147:2;149:21; 151:13;155:5;163:13; 164:6 onto (2) 28:18;106:8 opening (23) 4:14;5:6;10:10,25, 25;11:2,17;12:11; 13:14,18,19;16:4,19; 17:1,1;20:2;32:11; 39:9;48:18;61:24; 62:18,19;126:19 opens (1) 22:1 operate (2) 4:23;7:5 operating (10) 39:13,17;43:2,10; 44:14,19;51:15,16; 121:9,24 opinion (1) 117:6 opportunities (1) 159:14 opportunity (12) 4:14;5:21;9:5; 47:10;56:7;58:25; 59:11,22;117:4,10,14; 122:7 option (1) 151:14 options (3) 29:6;146:7;157:14 oral (11) 158:11;163:10,12, 14,17,20,25;164:3,9,
--	--	--	--	---

TAGNETICS, INC.

October 18, 2019

13;165:8 order (7) 21:10;84:13;85:2; 98:2,3,8;154:15 ordered (1) 97:25 oriented (1) 18:23 original (8) 40:2,15;71:25;84:2; 99:12;101:19;107:10; 129:22 originally (3) 36:21;37:6,8 other's (2) 8:5;17:7 otherwise (3) 40:14;66:14;165:7 out (65) 11:22;14:3,19;20:8; 9:24;19:25;14:19; 33:2;35:25;36:5,23; 37:9;38:9;41:2,23; 54:6;58:23;63:16; 64:16,23;65:16,22; 68:21;72:25;76:22; 77:10;80:24;81:11; 91:19,19;92:6;96:18; 98:24;114:6,10; 124:18,20;125:13,25; 126:3;130:15;132:23; 24;133:10,17;135:9; 17;137:8,8;142:16; 146:1,21,24;150:6,12; 23;153:11;154:8,16; 157:4;161:25;162:12; 163:2;164:5 outcome (1) 30:2 outlined (3) 24:17;95:22;114:10 outlining (1) 132:22 outs (2) 69:6;117:4 outside (9) 29:2;48:19;52:3; 74:23;77:14,15,18; 124:4,6 outside-the-contract (1) 66:3 over (21) 4:8;5:18,19;10:7; 15:13;18:25;20:5; 28:18;31:16,16,16; 33:12;50:17;86:18; 95:17;97:15;129:2; 132:24;148:5;149:23; 162:22 overall (2) 41:16;117:18 overlap (1) 9:9	override (3) 40:19;42:18;78:17 oversight (1) 15:7 overture (2) 24:1;62:23 owed (1) 29:19 own (17) 5:23,25,25;6:5,24, 25;24:24;25:3;39:11; 44:13,24;105:25; 106:4,10;116:4; 131:9;146:21 owned (5) 37:13;119:12,20; 120:2,13 ownership (12) 50:11;51:17;55:4, 15;56:21;145:23,25, 25;146:21;157:7,13, 13 owns (2) 44:6;55:14 P page (53) 4:10;13:12;14:22; 23:20;25:18;26:24; 27:16,24,24;28:15,16, 18,18;32:10;34:15; 36:16,17;37:16,18; 38:12;44:9;48:7,16; 61:3;62:12;66:11; 79:1,4;80:1,7,11,12, 14;81:15;83:25;86:7, 9;87:16;95:2;106:8,8; 108:23;109:4;110:24; 111:4,8,9,11;120:8, 25;138:25;143:16,24 pages (2) 36:25;81:16 paid (10) 29:19;133:1,10; 134:6;135:5,6,6,24; 146:1,21 paper (1) 163:17 Paragraph (19) 24:9,15;25:6;39:5, 9;45:8;48:25;61:24; 62:18;66:12;75:3; 88:9;105:24;108:24; 109:3;110:7,12,16; 111:1 paragraphs (1) 39:24 paraphrased (1) 119:2 parens (2) 27:9;64:13 parent (8)	39:16;44:14; 115:24,25;116:5,11, 13;121:8 parents (4) 43:1,10,21;51:15 part (34) 15:6;18:24;19:19; 23:11;24:7;35:24; 38:20;40:17;41:16; 45:2;46:12;65:8; 72:14;79:9,16;80:4; 82:16,17;84:6;89:11; 99:20;101:4,23; 102:1,4,6;109:11; 130:11;149:2;152:20; 153:7,11;158:21; 163:5 participant (1) 129:21 participation (3) 71:24;148:2;157:24 particular (4) 44:2;55:2;56:10; 145:18 particularly (6) 4:19;10:3;57:11; 94:22;128:23;139:21 particulars (1) 123:22 parties (13) 4:12,20;6:2;11:20; 29:3;32:23;35:16; 46:14,16;71:9;163:1; 164:18;165:2 partner (1) 22:11 party (5) 12:25;42:25;46:24; 73:12;162:22 party's (1) 162:22 pass (1) 7:18 passenger (1) 30:11 past (3) 152:6;154:3,5 patents (1) 93:20 path (3) 27:7;29:25;149:3 Pause (1) 54:9 pay (9) 27:9;29:12;84:9,19; 133:7,23;135:7; 146:9;151:14 paying (4) 84:24,25;108:5; 135:18 payment (49) 14:14;24:8,8;25:21; 26:3,6,8,9;28:4,6,9;	33:13,23;35:24,25; 36:10;62:6,17;74:9; 75:5;76:18;87:9; 88:17;89:15;95:5; 97:11;102:3,9; 107:23;108:1,3; 132:19,22,25;133:8; 134:1;135:4,4,8,18, 19,21,22;145:19,20; 159:19,20,21;160:15 payments (33) 15:10,18;16:13; 23:13;25:20;26:10; 28:7,11;33:15;36:4,7; 48:25;49:2,3,5;51:3; 52:8;62:16;65:10; 130:4;132:23,24; 133:9,24;135:9,10,17; 143:7;147:3;148:22; 159:19;160:8,11 payout (5) 94:18;95:8,10,13; 96:1 people (6) 22:8,21,23;37:14; 124:4;164:1 percent (7) 55:14,16;56:17; 94:20;145:23,24; 146:4 Perfect (2) 131:16;138:19 perfectly (1) 15:16 period (3) 15:13;21:13;132:25 permissible (2) 46:18;54:2 permit (1) 54:11 person (4) 55:12,12;58:16; 148:25 personal (1) 126:8 personally (1) 153:14 personnel (1) 92:18 perspective (8) 4:7;9:10,22;31:25; 40:25;97:6,7;128:1 pertinent (2) 14:1;31:2 petition (4) 56:18;94:7;116:13; 124:15 petitioners (1) 94:25 Petitioning (45) 4:4,25;5:10,21; 10:24;11:16,18;12:8, 18;16:6,10,12;19:22;	21:13;25:9;26:15; 27:20;30:4;31:18; 32:5;37:7,11,12,14, 19;38:22;40:16; 51:23;54:5;55:23; 58:18;70:15;82:17, 19;89:2;93:1;104:7, 12,13;155:17,25; 156:2;158:20;159:7; 164:22 P-H (1) 18:8 PhD (1) 93:13 phone (14) 21:12;22:10;30:15; 32:14;33:5;68:21,22; 70:16;94:11;132:17; 133:14;135:11; 142:24;162:13 phrase (20) 14:15,15;31:15; 33:20;52:11;63:20; 64:7,8,10;67:24;69:8; 72:13;88:22;110:12, 16;117:23;122:11,22; 123:13,18 phrasing (2) 77:24;86:16 picked (2) 20:10;112:3 piece (1) 163:17 piecemeal (1) 131:7 place (10) 14:10;33:10;56:18; 62:8;69:14;73:17; 84:11,13;85:1;153:15 places (1) 92:18 plain (1) 161:1 plan (2) 92:3,15 planning (2) 84:24;161:15 play (3) 19:21;88:14;145:3 please (21) 3:9;11:4;12:7; 13:22;17:22;18:2,6; 20:15;21:23;27:5; 33:5,24;50:4;54:17; 60:24;103:15;116:8; 120:18;126:20;129:7; 153:4 plenty (1) 47:10 pm (45) 21:2;25:13,25; 26:23;27:14,23;30:7, 8;33:3;34:6,13,21;
--	--	---	--	---

TAGNETICS, INC.

October 18, 2019

				Q
35:21;48:2,6,21,21; 50:21;64:12;76:2; 82:12;86:15;92:21, 21;106:7;111:3,6,7, 11;112:6;113:13; 114:25;115:3,11; 117:21;125:8;126:14; 127:18,22;140:20,24; 141:5;143:15,25; 165:10	postponement (1) 16:17	primarily (3) 21:17;30:16;59:5	22;71:25;72:2;73:24; 74:6;76:2,5;84:2; 85:20;94:10,12; 102:16;140:7,14,17; 148:18;149:10,12	qualify (1) 63:3
post-trial (1) 158:10	post-trial (1) 158:10	printed (2) 80:9;153:11	proposals (2) 76:9;85:21	quick (3) 80:25;84:23;87:6
potential (4) 22:4;23:3;24:12; 26:6	potentially (1) 88:14	printing (1) 154:8	proposed (10) 16:7,16;26:9;33:15; 58:11;75:16;80:6; 135:3,10,11	quicker (1) 163:14
practice (10) 6:23;7:11;8:8;13:1; 18:17,18,21,23;19:4, 10	practicing (1) 18:22	printout (4) 80:23;81:9;153:5; 154:13	prosecute (2) 71:12,23	quickly (3) 94:6;99:21;140:17
pocket (2) 125:19;137:8	predecessor (3) 93:19;123:4,12	prior (12) 43:7,25;89:15; 105:20;123:7,24; 124:15;128:4;141:6; 153:24;155:6,9	protestations (1) 159:6	quite (8) 15:17;27:3;41:9; 86:16;111:17;114:12; 157:14;163:10
point (53) 14:19;17:17;27:25; 33:1;36:9;40:11;55:2; 59:16;61:10;64:11; 65:3,14;67:14;69:20; 70:19;71:20;75:4,5; 76:22;77:8,22;78:5; 83:2;85:17;86:19,21; 91:17;106:19;107:7; 111:21,25;113:18; 114:22;115:2;124:11; 133:12;136:2;138:25; 139:2,7,20;141:10; 143:22;144:5;148:25; 149:21;150:10,13,19; 156:13;162:12;163:4; 164:15	preference (4) 53:19;112:20	privileged (1) 52:1	provide (8) 18:16;44:4;45:9; 101:12;144:14; 156:25,25;162:15	quoting (1) 100:12
pointed (3) 58:22;150:6,23	preferred (1) 133:18	pro (11) 4:20,25;6:2;9:2; 11:20;12:25;32:23; 38:1;161:15;163:1; 165:2	provided (12) 26:10;39:7;48:11; 50:6;52:25;66:25; 69:25;71:5;73:20; 87:16;103:18;116:16	R
pointing (2) 106:1,8	prejudice (2) 51:6,7	probably (11) 18:25;46:6,7;70:23; 82:4;91:3,13,21,23; 128:10;146:24	provision (6) 51:2;87:15;97:11; 109:10,10;116:19	raise (3) 5:1;18:2;29:5
points (1) 71:24	preliminary (6) 4:9,11,11,15;5:2; 137:11	problem (5) 24:7;80:19;81:18; 82:19;91:21	provisions (1) 114:10	raised (5) 28:1;71:25;148:19; 151:9;162:12
poor (2) 112:18;114:12	prepared (1) 93:1	procedure (2) 43:2,9	pull (2) 77:10;83:22	raising (1) 72:24
portion (5) 47:2;73:4;148:18, 19;154:5	preparing (1) 54:18	proceed (12) 6:13;13:17;15:24; 23:14;24:17;25:5; 29:16;42:17;83:8; 86:3;93:3;132:8	Purdue (2) 93:14,15	ran (2) 80:23;81:11
portions (1) 38:13	present (11) 5:7,22;8:10;24:5; 78:13;79:7;93:6; 128:20;148:4;157:25; 161:8	proceeding (9) 24:18;38:1,10;45:2; 51:6;123:24;124:1, 11;127:5	purported (1) 110:22	rate (1) 132:13
pose (1) 10:14	presentations (3) 9:4;11:8;165:6	process (6) 10:4;15:16;22:14; 81:6;84:22;116:23	purposes (2) 9:21;38:10	rather (3) 9:13;96:25;131:6
position (10) 6:9;9:7;29:23; 40:22,23;42:19;62:1; 89:5;153:19;164:4	presented (2) 99:15,20	produced (1) 125:1	pursued (1) 29:3	reach (4) 24:1;30:20;62:23; 133:4
possess (1) 146:22	president (1) 93:24	Proceedings (2) 3:1;165:10	pursuing (1) 29:17	reached (10) 33:4;53:13;61:21; 84:7;95:25;106:15; 107:3;115:18;137:11; 146:17
possibility (3) 20:4;24:13;49:17	presiding (1) 3:5	process (6) 10:4;15:16;22:14; 81:6;84:22;116:23	push (1) 135:16	re-acquired (1) 93:21
possible (5) 4:21,22;5:17;82:23; 91:18	presume (1) 62:1	produced (1) 125:1	push-back (1) 144:22	reaction (1) 52:15
possibly (1) 24:11	pretty (6) 13:25;27:25;34:4; 73:13;135:14;164:6	professional (2) 165:1,5	pushing (1) 69:11	read (19) 39:8;42:7;44:9; 46:5;61:14,25;67:11; 74:5;77:7;81:10; 83:16;84:20;96:16; 106:12;108:6;109:9; 121:17;163:18;164:4
post- (1) 51:22	prevail (1) 29:8	professor (2) 93:15,16	put (29) 6:16;15:2;16:9; 24:2;25:15;34:9; 62:24;74:13;75:19; 78:25;84:1;87:14; 88:22;98:16;113:17; 114:6;123:10,11,12; 16;132:19,25;135:24; 137:12;144:2;145:1; 151:12;163:11;164:3	reading (9) 23:24;45:11,21; 53:5;64:11;84:25; 125:19;134:1;150:3
postpone (1) 99:18	prevailing (1) 73:12	promise (1) 118:12	puts (1) 7:13	ready (5) 4:7;13:14;15:23; 60:13;165:7
postponed (1) 72:19	prevails (1) 29:12	prompted (1) 134:11	putting (5) 24:19;25:14;105:3; 133:22;146:3	real (2) 30:25;99:24
	previous (2) 146:10;150:1	proper (1) 71:21		realistic (5) 24:2,4;62:25;74:13;
	previously (6) 49:6;51:4,9;94:17, 24;101:9	property (2) 69:17;70:22		
	prima (1) 91:6	proposal (25) 16:9;24:6;25:23; 26:20;28:3,13;29:20,		

TAGNETICS, INC.

October 18, 2019

75:19 realize (4) 50:14;91:22;147:2; 161:12 Really (32) 17:20;20:10,11; 22:14;30:5;34:10; 46:12;61:9,10;63:18; 84:18,22;87:19;89:9; 123:21;134:16,23; 136:3;142:14;144:3; 146:7;151:15;153:9; 12,16;154:10,11,15; 156:9;160:2;161:21; 163:11 reason (11) 9:20;10:18;11:18; 39:25;44:22;56:14; 68:17;80:8,11; 141:11;143:3 reasonable (5) 29:20;88:23;135:7; 149:7,9 reasons (1) 31:2 recall (9) 72:2;83:20;85:17; 96:10,18;102:5; 105:17;150:2,3 receipt (2) 23:23;62:20 receive (5) 26:14;27:8,19;30:3; 97:16 received (14) 27:10,22;29:11; 78:14;83:12;84:16; 85:5;87:18;94:9; 96:12;98:5;104:14; 134:25;156:2 receiving (6) 33:23;97:20;150:2, 18,23;151:3 recent (3) 21:7;29:21;48:3 recess (9) 12:11,12;57:24; 58:3,4;82:4,7,8,10 recognize (1) 127:16 recollection (12) 65:25;68:25;69:1; 70:1,7;83:13,18; 84:17;85:10;87:17; 124:25;127:6 recommend (1) 70:25 recommending (1) 31:5 recopied (1) 152:6 record (6) 3:20;12:13;18:7;	54:4;58:5;82:11 recording (1) 11:4 records (1) 127:1 recross- (1) 145:8 recross-examination (1) 86:25 redacted (12) 37:10;38:4;44:5; 45:9,18,22,23;46:2,5, 19;47:13;120:20 redirect (8) 5:13;86:3,4;128:21; 144:14,16,17;156:20 redline (4) 99:10,13,15;103:3 reduce (1) 135:9 re-elicit (2) 68:3,6 refer (12) 9:25;14:1,21;19:23; 35:5;60:24;73:1; 75:23;76:10;108:12, 23;141:1 reference (12) 14:21;70:22;75:12; 76:7;85:21;110:7; 141:5,9;153:10; 156:15;159:8,14 referenced (7) 17:17;25:20;26:22; 35:2;40:3;65:3;109:7 references (1) 66:1 referencing (1) 64:10 referred (7) 28:9;32:11;73:15; 105:3;109:5,8;110:8 referring (30) 9:14;33:17,18; 35:10,25;61:3,16; 67:10;69:14;72:22; 73:19;80:17;81:15; 86:11;105:5;108:22, 24;109:4;110:17; 118:6,11,16;125:12, 17,24;126:2;140:19; 152:11;159:10,19 refers (3) 50:11;74:16;87:10 refine (1) 151:16 reflect (6) 15:14;21:24;37:1; 85:16;115:4,11 reflected (19) 20:23;23:10,19; 25:18;26:21;27:23; 28:13;31:9,11;33:18;	37:15;63:13;108:2; 110:21;143:10;160:3, 10,12;161:2 reflection (1) 21:4 reflects (9) 14:5;15:8;23:2; 31:11;36:6;37:2,9; 65:4;99:17 refresh (2) 124:24;125:5 refused (1) 98:5 refute (1) 153:19 regarding (3) 22:3;38:21;66:25 regardless (2) 69:9;161:10 regurgitating (1) 148:15 reiterated (1) 98:21 reiterating (2) 65:8;97:22 reject (1) 74:7 rejected (7) 20:8,10;21:3;57:16; 74:3;75:16;145:2 rejecting (2) 25:14;61:8 rejection (2) 26:16;75:20 related (9) 11:13;30:12;39:13, 18;44:15,20;50:10; 69:17;121:9 relates (1) 78:16 release (54) 32:2,3,4;39:4,24; 40:24;41:1,12,15,16; 43:20;44:8;45:4;51:1; 65:17;66:9,10,11; 69:10;70:20;71:18; 72:9,11;89:13; 112:17,24;113:2,3,4, 7,8,9,10;116:21; 117:4;121:4,7,7,15; 136:12,13,15,19,21; 142:1,6,15,19,22; 160:13;162:10,15,20, 25 released (4) 31:22;32:1;40:16; 121:23 releasees (1) 39:23 releases (49) 14:16;15:12;30:25; 31:10,13,15;33:20; 38:13,16;39:7,15;	40:2;44:6,11,18;49:4, 7,10;51:14;52:9; 63:21;64:2,13,14; 69:13,24;70:1;71:17; 89:17;115:16,19,22; 116:7,10,20;117:3,9, 13,23;122:12,22; 141:17,21;142:5,7,20, 25;159:17,22 relevance (2) 40:5;46:15 relevant (5) 10:13;47:2;145:18; 153:14,20 relied (1) 121:6 relinquish (2) 89:10,12 relinquishment (1) 89:13 remainder (3) 26:8;60:22;133:10 remaining (4) 33:15;37:14;38:21; 58:17 remember (30) 20:22;21:14;30:8, 13,21;31:12;32:14, 15;33:25;34:3;35:11; 63:11;68:24;69:3,9, 12;71:7;77:24;84:7,7, 15,18;85:3,8;88:15; 127:11;139:5;142:3; 152:12;154:17 re-mention (1) 149:15 remind (3) 93:8;129:9;148:11 remorse (2) 52:11;77:23 removed (1) 10:19 render (4) 163:20,25;164:13; 165:8 rendered (1) 66:25 renegotiate (4) 62:5;7,95:9,12 renegotiated (1) 96:3 renegotiation (2) 95:15;130:9 reorganized (4) 93:22;123:9,13,19 Repeat (4) 115:6;116:8; 122:20;126:1 repeated (3) 49:10;159:25; 160:20 repeatedly (2) 15:14;98:21	repeating (1) 52:9 re-photocopy (1) 152:15 rephrase (1) 122:10 reply (2) 33:5;113:21 report (1) 69:23 reported (1) 72:6 represented (2) 34:24;37:25 representing (2) 9:1;31:1 represents (1) 35:7 request (8) 47:20;49:12;70:13; 71:15;94:9;95:9; 101:20;162:1 requested (4) 40:13;69:24;71:11; 74:8 requesting (2) 24:3;94:17 requests (1) 49:2 require (2) 29:4,12 required (2) 107:2;149:11 requirements (1) 150:11 requires (1) 64:17 reread (1) 66:12 rescinded (1) 107:17 research (3) 55:7,10,11 resembles (1) 16:9 reservation (2) 71:11,17 reservations (1) 31:14 reserve (11) 56:5;57:19;58:23; 59:9,17,21;70:13,14; 131:12,14;162:14 reserving (1) 71:22 resigned (2) 94:2;116:2 resolution (3) 24:1;62:24;109:12 resolve (1) 62:21 resolved (2) 19:13;94:6
---	---	--	---	---

TAGNETICS, INC.

October 18, 2019

respect (4) 9:8;114:24;156:25; 159:10	reviewed (1) 4:6	27:15;65:22	26:8;28:4;33:15,17, 18;35:24;62:6,17; 74:9;76:18,22;87:10; 88:8,17;94:18;96:1; 97:11;102:4,10; 107:23;108:3;135:4, 4;149:3	111:17;134:19;135:7; 153:6;159:13
respond (7) 23:18;25:9,23;27:1; 28:21;114:4;121:14	reviewing (1) 155:18	rough (1) 118:12	selected (1) 97:21	sell (1) 135:20
responded (7) 25:12;48:13;61:8; 73:24;74:6;113:12; 140:16	revised (2) 26:1;46:19	royalties (1) 66:24	send (5) 27:5;32:16;61:21; 105:19,19	sending (1) 105:20
responding (7) 28:23;34:8;48:2; 101:20;113:16; 134:22;144:1	revisiting (1) 68:16	rule (4) 6:12,12;58:15;68:6	school (2) 7:18;18:19	sense (4) 33:8;153:23; 154:16;164:16
response (41) 4:4;23:19;24:21; 26:14;27:1,13,19,22; 28:15;30:3;32:1;34:6; 40:9;50:5,5;53:2,6; 62:10,11,11,14,19; 67:14;73:23;75:20; 77:16;86:13;94:16; 97:22;101:10;111:16; 113:20;114:6;132:16; 139:9;144:15;149:9; 150:4,6,22;151:15	revive (1) 86:19	ruled (2) 29:4;58:12	scope (10) 14:14;40:1;48:19; 52:3;63:25;77:14,15, 18;78:15;150:12	sensitive (1) 32:22
responses (1) 39:2	rewrite (1) 160:25	ruling (8) 6:14;56:5;57:20; 58:24;59:9,17,21; 99:8	screen (1) 106:12	sensitivity (1) 32:24
responsive (4) 109:22;110:2; 114:17;118:16	right (56) 5:5,11,12;18:3; 35:5;37:5;41:10;44:2; 46:3;56:1,4;59:16; 62:11;66:20;70:13; 15;71:14,22;74:15; 24;80:21;83:4,7,8; 86:1;100:14,15,21; 101:23;102:11,22,24; 104:2,21;106:1; 115:15;116:5;122:23; 126:18;127:11; 128:24;129:3;130:2; 131:11;132:4;136:10, 10,13,20;138:24; 139:12,22,25;152:13; 161:2;162:14	running (2) 80:10;96:19	se (11) 4:20,25;6:2;9:2; 11:20;12:25;32:23; 38:1;161:16;163:1; 165:2	sent (43) 14:23;22:20;27:2; 28:22;35:17;36:18; 43:17;50:16,19; 54:22,25;60:21; 64:25;65:6;76:24; 77:13;78:22;83:19; 85:9,14;94:15;96:9; 10,17,25;97:23;98:6; 101:9;103:4,19,23; 104:9;124:17,19; 127:10;129:22; 130:14;132:21;141:2; 150:1;151:8;153:13, 18
rest (3) 67:11;132:5;163:24	rights (3) 69:17;89:12,14	salary (1) 66:6	seat (2) 11:7;30:11	sentence (5) 23:25;62:20,22; 63:1;126:19
restate (2) 110:25;130:1	rise (4) 12:12;58:4;92:20; 165:9	same (38) 4:9;5:18;9:15;10:2; 12:5,22,23;13:8,9,12; 16:21;17:3,8,9;25:4; 34:18;36:1;44:19; 46:14;60:3;62:12; 67:25;68:12,16,17; 70:10;71:24;95:2; 103:5;106:6;117:11; 136:25;137:5;145:13; 148:16;150:6;156:23; 157:5	seated (5) 3:6;12:16;58:8; 82:14;92:23	sentences (1) 62:19
restated (1) 149:25	risk (3) 8:25;27:9;29:7	sat (2) 94:11;114:11	second (16) 23:24;36:4;62:21; 89:1;98:10;105:23; 108:23;109:3;125:18; 128:14;135:3,17,18, 21;142:11;146:12	separate (5) 9:19;11:21;12:19; 44:25;46:25
restatement (1) 97:18	risks (1) 29:24	Saturday (1) 125:7	secrets (1) 70:23	separately (1) 38:3
rested (1) 92:25	R-N (1) 18:9	save (1) 163:13	Section (11) 39:6,6,6;44:9,23; 65:1;73:11,12;87:15; 88:3;121:5	series (5) 14:1;20:19;21:2; 25:19;152:21
restricted (1) 137:7	road (2) 91:21;164:10	saw (15) 53:9;76:25;77:3; 84:18;98:3,23; 113:25;114:3;115:9; 116:9;122:11,21; 134:4;157:2;159:18	sections (1) 38:4	serious (2) 109:11;134:24
restructuring (1) 130:4	Roanoke (1) 99:9	saying (27) 24:13;25:4;28:23; 34:6,9;35:14;38:19; 41:13,14,15;63:22; 69:13;70:7;71:7; 73:16;77:17;83:14, 19;85:19;113:16; 114:4;118:10;127:10; 134:23;139:9;144:2; 149:6	secured (1) 16:16	serve (2) 7:17;13:10
result (2) 31:18;97:20	Robert (2) 3:14;37:21	sat (2) 94:11;114:11	seeing (4) 15:17;155:4,5,6	services (1) 66:25
retain (1) 41:21	role (1) 19:21	Saturday (1) 125:7	seek (13) 15:15;24:24;25:2; 29:25;30:2;49:3,6; 79:14;105:25;106:4, 9,16;160:21	serving (2) 8:7;56:16
re-trade (1) 53:12	Romanette (7) 66:18,18,21,23,24; 67:1,4	save (1) 163:13	seeking (13) 14:17,18;15:10,11, 18;19:16;49:24; 103:6,12;152:23; 159:15;160:8,11	session (5) 3:4;12:15;58:7; 82:13;92:22
retrieve (2) 82:4,8	Ron (15) 23:22;26:1;28:23; 33:3;64:25;65:1;66:2; 93:23;95:12,14;96:1; 107:22;123:20;129:7; 136:9	saw (15) 53:9;76:25;77:3; 84:18;98:3,23; 113:25;114:3;115:9; 116:9;122:11,21; 134:4;157:2;159:18	seem (3) 63:16;111:23; 134:23	set (10) 9:12;13:25;14:15; 34:23;61:13;98:15; 143:17,18,20;164:12
return (3) 29:11;72:10;91:24	Ronald (5) 3:23;129:12; 132:10;138:7;144:16	scanned (1) 81:19	seems (8) 27:3;30:1;86:16;	sets (4) 15:22;32:16;33:4;
returned (1) 27:12	Ron's (2)	scanning (2) 82:3,18		
revealing (1) 52:1		scenes (1) 160:23		
reverse (2) 21:10;154:14		schedule (24)		
review (1) 100:3				

TAGNETICS, INC.

October 18, 2019

48:9 setting (4) 22:6;23:15;49:1; 100:2 settle (6) 40:6;94:10;19; 98:22;111:22;134:7 settled (3) 19:11;37:8;147:12 settlement (124) 4:3;13:24;14:8,12; 15:9,11,20;16:8,16; 19:13,15,18,22;20:4; 21:4;22:4;23:3,17; 24:4;27:10;28:2;29:2; 30:19;33:8,11,12; 35:4;36:8,10,19,20; 37:10,20,22,24;38:15; 21;40:2,7;41:3;42:11, 14,21;43:2,7,14;44:1, 25;45:13,19;46:14, 16;48:11,14;49:2; 50:6,24;51:23;52:25; 53:13;54:19;55:1; 64:24;65:9,21,24; 67:10;73:8,11,14,18; 74:2;84:14;88:9;89:5, 6;94:12,23,24;95:23; 97:15,16,19;99:9; 101:21;102:17; 106:20,23;107:2,7,17; 111:25;117:18;118:6; 120:12,15,19,21,24; 121:3,22;122:25; 129:25,25;133:4,7,18; 137:1,9,13,18,19,21; 139:18,19;146:16,16, 24;149:1;151:13; 157:9,9;159:18;160:3 settlements (3) 19:3;43:9;99:4 settling (3) 37:19;99:25;134:24 seven (1) 67:4 several (5) 21:20;81:16;95:17; 108:3;132:17 share (1) 127:24 shared (1) 55:9 shareholder (2) 56:17;124:8 shareholders (5) 39:20;44:17; 123:25;124:2,7 shares (5) 119:12,19,20; 120:2,6 sharing (1) 38:14 sheet (8)	14:2,16;32:12; 34:12;37:3;72:12,20, 22 sheets (1) 72:23 short (10) 26:18;27:2,25; 35:17;61:19;82:6,7; 91:10;148:21;149:6 shortness (1) 75:3 show (17) 16:7,11,15;33:8; 38:11,12;43:7;55:7; 78:23;81:25;107:6,8, 12,19,25;120:21; 124:24 showed (1) 125:5 showing (1) 65:6 shows (6) 27:15;28:5,11,15; 46:19;81:14 side (4) 9:13;65:14;90:12, 15 sides (1) 29:7 sign (2) 98:4,5 signature (4) 38:12;120:8,20,25 signed (12) 37:17;43:7,12,15; 54:21,24;98:7; 120:11,20,21,24; 121:20 significance (1) 96:21 significant (5) 16:15;29:14;95:20; 121:25;133:3 significantly (1) 81:22 silly (4) 27:3;86:16;111:17; 134:20 similar (5) 40:14;50:8;84:2; 87:20;157:5 simply (6) 27:3;86:17;99:25; 111:18;139:8;163:15 single (1) 42:23 sit (1) 160:25 sitting (1) 90:12 situation (5) 6:3;9:1;29:1; 114:13;133:20	six (10) 28:8;33:16;36:4; 37:7,8;67:1;133:9; 135:17,19,22 skeptical (2) 40:22;42:19 skim (1) 84:23 skip (1) 50:17 slash (1) 52:24 slice (1) 159:23 slightly (1) 162:17 Slow (2) 101:17,17 small (2) 54:24;150:24 Snickers' (2) 91:6,7 sold (1) 93:21 sole (1) 84:11 somebody (2) 57:12;79:10 someone (3) 146:3,7;147:4 sometimes (1) 20:21 somewhere (1) 164:2 sorry (21) 7:23;11:14;24:25; 38:25;59:13;74:4,5; 78:10;100:8;102:14; 103:10;105:9;107:12; 108:8;109:25;113:14; 120:9;126:9;144:9; 145:7;160:10 sort (4) 80:18;130:16; 133:15;160:12 sorts (2) 43:19;128:9 sought (1) 51:2 sound (1) 124:21 sounds (2) 109:15;155:23 Southern (1) 3:3 speak (9) 35:10,12;105:7; 106:20;109:1;113:23; 114:5,23;144:4 speaking (7) 21:14,17;23:6;34:3; 113:18;118:8,19 specific (7)	25:14;69:1;71:10; 83:13;97:4;149:10; 156:15 specifically (25) 38:16;39:18;43:6, 11,13;44:21;51:18; 55:3;69:3;71:15; 72:25;73:25,25;74:2, 7,9;75:2;83:20;85:18; 118:23;121:10,19; 145:2;148:20,22 specifics (1) 84:17 speculation (1) 68:25 speed (1) 84:11 spoke (1) 21:25 spoken (2) 21:15;34:2 spread (4) 132:22,24;133:9; 135:9 spreadsheets (1) 77:5 stake (1) 147:2 stamped (1) 80:16 stand (13) 3:19;6:17,17;9:6; 11:6,10;12:7;18:2; 93:6;101:14;138:12; 145:15;152:14 standard (2) 43:2,9 standpoint (1) 147:6 start (2) 16:2;93:12 started (4) 4:8;10:9;20:3; 92:16 starting (2) 30:13;86:21 starts (3) 20:25;80:22;155:18 state (12) 3:19;6:7;11:24; 12:2;16:20,21,24; 18:6;40:20;62:15; 67:23;73:25 stated (5) 6:10;16:21;57:10; 150:18;163:3 statement (20) 4:14;11:22;13:18; 16:4,19;17:1,1,5; 51:7;55:10;62:1;63:1; 74:15,18;94:3; 107:18;143:23;144:4; 150:10;154:20	statements (13) 5:7;6:7;10:10,25; 11:1,3,17;12:11; 13:15,20;57:14; 77:22;116:4 States (1) 3:2 stating (3) 8:4;69:5;162:10 status (5) 36:24;40:17;73:12; 111:24;116:3 statute (1) 66:14 stay (6) 100:15;137:4; 145:5,6,8,11 S-T-E- (1) 18:8 S-Tek (5) 29:10,10;37:20,25; 135:6 step (2) 22:11;89:25 Stephen (15) 3:12;13:22;18:5,8, 11;25:15;26:18;28:1; 34:22;35:15,22; 60:18;61:18;86:4; 111:12 STERN (169) 3:11,12,13;4:13,17; 8:17;11:1,14;13:16, 17,18,21,22;16:1; 17:9,11,14,20,24; 18:4,5,8,8,11,13; 40:15;42:21;45:24; 47:22;56:1,58;10:25; 59:11,16,19;60:14,15, 17,18,20;61:2,67:4,7, 12,15;68:10,20;70:6; 77:13;78:2,14;82:16; 83:3;86:4,25;87:7,13; 88:11;89:8,21,22,25; 90:2,9,11,16;91:17; 92:1,7,11,14;94:10, 16;96:17;97:14,21; 98:3;101:24;102:12, 20;103:4,16;104:8,22, 23,25;105:2;108:11, 15,21;109:21;110:1,3, 4,5;113:25;114:16, 21;118:15,21,25; 119:1,2,5,6,9;125:2,4; 126:9;127:13,15; 128:13,16,18;129:24; 131:3,12;132:15,21; 133:12,20;135:10; 136:7,14,15;138:4,6, 8,10,14,23;144:7,8,9, 12;145:10,14;147:16, 17;148:20;149:14; 150:1;152:8,10,16;
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TAGNETICS, INC.

October 18, 2019

153:3;154:6,21; 155:2,11,14,19,23; 156:8,9,11,18,19; 157:18;158:14,20,23, 25;159:3,5;161:7; 164:16,21;165:5 stern@kagansterncom (1) 154:23 Stern's (4) 90:21;128:22; 132:16;144:15 stickers (1) 79:24 still (18) 59:10,11,15;79:16; 80:4;85:14;89:3;93:9; 99:22;122:23;129:10; 135:23;138:12;145:2, 11;146:11;148:12; 151:6 Stochastics (1) 93:16 stock (17) 50:10;89:3,6,10,18; 120:6;146:6,13,17,21; 147:6,11;157:6,10,12, 13,14 stop (3) 6:11;109:23,24 story (1) 148:16 Strain (5) 37:21;38:1,3;41:4; 135:6 straits (1) 108:4 streamline (1) 131:4 stress (1) 95:20 stretch (1) 64:9 stretched (1) 162:24 strictly (1) 25:21 strike (1) 109:22 string (29) 14:5;20:19,25; 23:20;25:19;30:6; 35:20;48:3,3,5,8; 52:21,22;53:2,4;79:1; 105:12,15;106:6,11; 107:11,12;127:16; 153:6,7;154:10; 155:24;159:7;161:4 strings (2) 85:17;160:21 stripping (1) 147:11 structurally (1) 24:18	structure (6) 24:16;26:2;117:18; 132:20,22;133:22 structures (1) 24:11 struggling (1) 46:15 stuff (5) 17:9;25:4;30:12; 98:13;154:17 sub- (1) 133:8 subject (2) 23:1;27:11 submit (1) 103:17 submitted (3) 47:12;100:20;102:5 subs (3) 43:10,21;51:15 subsequent (4) 28:7;36:25;38:14; 61:7 subsequently (2) 50:21;62:5 subsidiaries (5) 39:17;43:1;44:15, 20;121:9 subsidiary (3) 116:19;117:5; 121:24 substantial (1) 29:7 substantive (2) 23:2;48:17 substitute (2) 46:18;47:11 succeed (1) 151:14 successful (1) 147:4 successors (1) 39:12 succinct (1) 26:18 sue (15) 69:16;70:15; 115:23;116:5,11,19; 117:5,10,14;122:7,8, 13,23;162:14,22 suggest (2) 29:24;59:9 suggested (2) 106:16;133:25 suggests (1) 62:7 summarized (1) 149:25 Sunday (2) 155:21,22 supplied (1) 151:6 support (4)	6:9;7:3;8:5;9:7 supports (1) 15:24 suppose (1) 148:16 supposed (3) 30:10;76:4,19 sure (46) 4:9;6:11;8:14; 18:18;19:23;20:19; 21:24;22:8,11;23:2; 24:7;25:3;31:25; 32:17;33:1;34:4; 35:22;49:4;51:25; 52:20;54:18;55:10; 65:16,18;72:14; 76:17;79:21;81:4,5; 91:24;92:16;96:5; 98:19;105:9,20; 106:2;108:9;110:4; 120:17;129:15;142:7, 10;152:10;153:9; 154:10;158:25 surprise (3) 43:8;69:23;163:6 surprised (6) 15:17;34:1;38:17; 43:18;52:2 surrounding (1) 141:23 suspect (1) 109:13 sustain (4) 45:25;46:3;47:7,18 Sustained (1) 114:19 swap (1) 146:6 swear (2) 11:15;12:3 swearing (1) 12:5 sworn (6) 11:19;12:1,1,3,8; 18:5 system (2) 11:4;81:7	62:21,22;66:17;67:1; 69:16,19,22,23;70:13, 25;71:11,22;72:4,6,7, 7,9,11,24;75:4;86:6; 88:14;89:4;92:25; 93:23;100:4;107:3; 108:4;109:11;115:23, 25;116:3,6,11,19; 117:5,10,14;119:12, 20;120:2,22;122:14, 24;123:4,25;124:7; 127:5;130:13;132:20; 135:13;140:18; 144:21;146:20;149:2, 6;151:13;157:10; 162:13;163:1 Tagnetics' (13) 8:14;9:17,25;20:14; 29:13;52:15;58:11; 60:7;90:17;93:18; 102:23;121:8;122:8 talk (4) 61:9;75:2;134:19; 165:7 Talked (9) 24:10;95:17;135:2; 136:7,8,11;138:2; 148:24;155:2 talking (10) 11:3;19:15;28:17; 46:1,20;54:1;64:1; 70:18;122:25;152:20 team (2) 23:25;62:22 Technology (2) 66:5;93:20 telephone (2) 21:5;163:22 ten (3) 55:14,16;56:17 tend (1) 46:9 tentative (1) 164:12 term (32) 14:2,15;16:14; 24:14;29:6;32:12; 33:21;34:12;37:3; 65:14;72:12,20,22,23; 75:9,20;96:3,22; 109:4,7;110:7,10,14; 113:6;115:16,22; 117:8,12;142:11,22; 159:17;160:17 terminated (2) 86:12;159:12 terminating (1) 134:14 terms (152) 13:25;14:3,4,7,8, 14;15:23;16:7,14; 24:19;25:14,20;26:5; 28:12;29:3;30:21,23;	31:8,11,22;32:15,17; 33:4,6,13,24;34:9,23, 24,25;35:1,2,3,19; 38:8,9;41:3;42:6; 45:3;46:13;48:10,10, 19,24;49:11,18,20,21, 23;50:9;52:5,9;53:10; 61:13,20;63:5,6,10, 12,14,25;65:2,4,7; 73:1,3,4,5,7,8,10,14, 16;74:7,8;75:23,25; 76:3,3,4,7,10,14,19; 85:7,12,15,16,22; 89:18;94:12,14;95:3, 10,12,13,16,21;96:13, 15;97:19,22;98:21; 104:15;105:19,21; 107:1,13;108:1,24; 109:19;110:20,20,23; 112:7,15,25;113:4,17; 114:6,24;115:4,11,17; 116:24;117:2,17; 130:3,10,20;141:6,9; 142:21;143:1,10,17, 18,20;144:2;145:1; 149:11;159:9,14,24; 160:2,6;161:1,3,19, 20;163:7,16 terrible (2) 74:22,23 testified (10) 77:18,19;78:2;88:6; 121:2;123:3,9; 141:16;153:13; 160:24 testify (14) 5:25;6:4,23;7:1; 8:3;56:21;58:16; 64:23;70:7;75:1; 98:19,20;123:21; 131:5 testifying (7) 8:15;11:10;17:12; 46:4;57:12;131:9; 153:18 testimony (37) 6:11;8:7;11:6,23; 12:1,1,3;16:24;59:14; 66:22;68:1,3,7;78:9, 17;85:11,25;90:21; 93:11;104:19;106:25; 109:22;123:14,19; 131:6;132:10;139:1, 2,5;142:3;144:16; 148:14;150:2,10; 156:13,24;161:10 thanked (1) 133:21 thanks (1) 5:4 theft (1) 70:23 theme (1)
---	---	---	---	--

TAGNETICS, INC.

October 18, 2019

49:10 thick (1) 79:16 thinking (3) 87:25;163:21;164:1 third (7) 15:8;24:15;35:18; 36:4;135:17,19,22 thoroughly (2) 33:10;73:18 though (7) 13:2;20:20;27:15; 46:14;47:14;50:11; 99:20 thought (15) 4:8;7:9;86:17,22; 91:20;94:20;99:17; 105:18;106:15; 112:17;115:18;127:8; 139:19,23;161:23 three (40) 11:16;14:6;16:4; 23:13;25:1;27:14; 28:6,11;29:8;31:13; 33:14;36:3;37:8,11; 46:16;49:19;52:7; 66:21;72:10;73:21; 76:8,13,20;77:1;94:7; 10:95:10;97:6,17,21; 99:22;105:16,22,25; 106:7;136:7;137:18; 160:1,20;163:1 throughout (2) 68:5;93:25 throw (2) 147:5;164:5 times (5) 14:6;48:22;76:13; 160:1,21 timetable (2) 99:12;130:4 timing (4) 50:14;118:18; 136:10;139:22 today (15) 4:24;9:7;13:23; 15:2;19:16;37:15; 47:18;57:13;68:5; 91:18;94:8;123:24; 158:11;160:25; 163:19 together (9) 87:14;98:16,17; 127:1,3,19;132:19; 133:22;164:3 told (7) 31:7;96:7,9;121:25; 130:13;133:13; 142:14 took (6) 36:21;38:9;82:4; 92:24;136:22;163:6 top (14)	25:18;27:16,24; 28:18;34:15;35:19; 42:24;61:14;74:9; 79:25;126:11;127:17; 155:8;165:3 topic (3) 69:3;116:12;149:17 total (21) 10:17;15:9,11; 23:13;28:11;36:8,8, 10;52:8;65:9;77:3,6, 7;94:18;102:16; 132:25;135:6;159:18, 20;160:9,9 totally (1) 47:17 totals (1) 36:7 touch (4) 137:4;147:9; 164:10,11 towards (1) 133:4 track (1) 92:14 trade (1) 70:23 train (1) 144:18 transaction (4) 38:6;61:22;145:22, 22 transfer (2) 61:23;146:2 transfers (1) 146:3 transmitted (4) 38:19;39:1;118:2,4 transpired (1) 86:18 travel (1) 158:13 treat (2) 12:2,18 trial (13) 16:17;19:10,12; 61:24;72:19;96:11; 99:19;100:1,2; 137:17;140:1;161:13; 162:2 tried (2) 88:18,22 trouble (3) 22:9;126:9;154:15 try (16) 4:20;20:13;24:1; 40:11;45:4,4;48:16; 53:12;62:23;63:19; 80:24;120:18;140:5; 147:5;149:5;154:13 trying (23) 11:12;30:19;46:5; 53:9;72:18;74:5;	77:21;78:4;82:16; 84:10;86:18;97:3; 109:12;112:19;119:3; 133:4,17;140:5; 149:18;154:12,12; 158:6;163:4 T's (1) 163:16 Tuesday (6) 78:5,23;97:23; 115:13;149:24; 150:14 turn (5) 20:14;111:10; 120:7;138:24;148:5 tweaks (2) 54:23,24 twice (6) 14:6;21:16;34:2; 76:12;159:25;160:20 two (32) 9:14;10:19;13:9,10; 25:1;28:7;34:21;36:2; 49:19;50:15;52:7; 62:19;66:18;76:8,8; 87:9;94:25;95:7; 96:20;98:1;99:11,13; 101:9;103:1,7,14; 133:8;137:15,22; 145:13;147:1,13 two- (1) 132:24 type (1) 148:22 types (4) 66:16;67:13;73:14; 88:13 typical (3) 38:8;43:11,19 typo (1) 76:23	127:25 understands (1) 4:22 Understood (10) 7:15;8:9;42:20; 44:7;80:22;93:10; 97:9;148:13;149:22; 157:15 undetermined (1) 133:1 unfortunate (1) 36:22 unfortunately (5) 6:1;11:20;29:6; 80:23;157:13 unique (2) 19:17,19 United (1) 3:2 University (1) 93:14 unjust (1) 67:2 unknown (1) 66:14 unless (6) 6:18;54:3;80:19; 118:22;120:17; 137:17 Unpaid (5) 66:17,18,19,21,23 un-redacted (2) 44:4;45:9 unusual (1) 65:12 up (48) 8:2;11:7;17:14; 20:6,10;22:1,1;24:8; 28:15;33:9;38:23; 64:19;68:24;69:8,22; 83:22;84:11;91:6,11; 95:7;96:3;100:15,18, 23;105:3;108:5; 109:19;112:3;128:6; 135:5;137:15;138:12; 142:4,6,25;143:4,7; 145:19;146:7;149:3; 8;158:6,12;163:14, 24;164:7,9,12 upon (14) 5:14;28:9;41:3; 57:8;58:13;63:25; 87:8;89:22;90:2; 128:21;147:15,19; 156:20;157:17 upper (1) 126:15 use (15) 9:12,17,25;10:6; 20:13;52:11;63:15, 17;64:5;70:24;88:12; 92:12;126:20;161:20; 162:9	used (9) 64:6,7,8;86:16; 87:23;88:22;99:3; 123:18;142:11 uses (1) 112:8 using (2) 9:14;63:20 usually (1) 161:17
V				
vacation (5) 19:20,25;22:7;30:9; 84:10 vague (1) 96:22 valid (1) 157:15 various (2) 49:24;66:16 Ventures (17) 37:12,18,25;40:6, 18;44:12;45:15,20; 66:5;120:8,9,13,22; 121:4;122:3,4,4 Ventures' (2) 45:13;122:15 verbal (1) 99:21 versa (1) 13:4 version (10) 37:10;44:4;45:9; 46:19,19;47:13; 99:10,15,19;103:5 versus (1) 11:23 via (1) 164:18 vice (1) 13:4 view (2) 51:22;161:11 viewed (1) 114:12 viewpoint (1) 6:8 Virginia (1) 99:10 virtually (2) 81:16;108:6 vis-a-vis (1) 89:14 voluntary (1) 51:5				
W				
wages (1) 66:18 wait (2)				

TAGNETICS, INC.

October 18, 2019

				2
54:8;131:4	163:2	11:4;164:1	11:14 (1)	2 (17)
waive (1)	wiping (1)	worlds (1)	58:5	
158:9	65:22	137:22	11:33 (1)	15:22;24:9;27:24;
waiver (1)	wire (1)	worried (1)	125:8	28:15;16;44:9;48:7;
73:12	136:20	85:2	11:50 (1)	75:3;87:15;16;88:3,9;
wake (1)	wish (32)	worry (1)	82:11	102:3,12,15;110:12,
158:6	4:12;5:1;13:20;	11:25	11:52 (1)	16
wants (2)	16:20;17:10;60:15;	worthless (1)	50:7	2:19 (1)
101:6;153:21	68:2,9;90:17,19,22;	29:9	112-5 (2)	48:6
way (34)	91:12;100:7;104:16,	wrap (1)	80:7,7	2:30 (1)
7:10;8:18;11:5,25;	21;128:20;129:4;	137:14	11th (1)	91:20
16:8;19:2;24:19;26:4;	131:18,23;137:25;	wrapped (1)	149:18	2:38 (2)
33:2;52:13,14;63:22;	144:13;148:3;151:19;	79:3	12 (6)	158:7,8
65:13;67:24;71:8;	156:4,5;157:24;	write (3)	28:8;33:16,16;36:5,	2:48 (1)
83:18;86:22;100:1;	158:8,9,10;161:8;	74:12;97:22;134:11	5;135:19	165:10
110:15;112:21;	162:4,7	writing (3)	12:06 (1)	20 (2)
133:17,24;135:13,23;	wishes (1)	14:7;21:5;164:4	82:11	16:13;75:17
136:25;138:10;	93:3	written (13)	12:17 (2)	2019 (37)
139:23;147:2;149:2;	withdraw (1)	14:12;33:11;36:5,8;	91:1,2	3:5;8:17;9:11;14:3;
154:2,4,8,14;163:17	122:9	48:10;73:8,20;83:25;	12:20 (1)	16:10;21:1;26:22;
weak (1)	within (6)	87:21;160:6;161:5;	92:21	27:14;35:20;48:1,6,
134:22	33:13,22;34:18;	163:12,15	12:42 (2)	21:50;21;53:8;
weather (1)	78:15;134:2;137:15	wrong (1)	27:14;86:15	105:23;107:1;110:13,
74:22	without (11)	153:4	12:44 (1)	23;111:3,11;115:3;
week (10)	25:14;43:15;48:24;	wrote (5)	68:21	119:11;120:1;122:11;
19:24,24;20:5;	49:20;51:6;64:5;	33:2,12;34:10;	123 (1)	124:21;125:8,15;
27:10;29:11;103:25;	99:14;117:6,16;	115:10;161:3	14:21	126:14;127:18,22;
134:18;137:15;	126:25;148:15		148,000 (1)	140:20,24;141:2,5;
163:21;164:17	witness (17)	Y	133:6	143:15,25;155:18
weekend (4)	6:6;7:2,10;8:12;		14th (7)	20-some (1)
33:12;78:6;97:15;	11:3,11;17:12;18:5;	year (3)	16:8;48:12;50:6;	93:19
149:23	79:11;85:25;93:6;	94:2;132:25;135:20	53:1;64:25;153:8,8	20th (54)
weeks (2)	101:14;108:13,15;	years (6)	15 (2)	8:17;9:11,24,25;
98:1;151:1	128:25;138:12;	18:22;19:1;72:24;	18:25;92:8	16:10;22:16;35:2;
welcome (1)	147:25	90:14;93:19;109:18	151,000 (1)	49:15;50:20;53:8;
150:21	witnesses (17)		133:6	60:21;61:17;71:25;
weren't (5)	5:8,9,12,16,24;7:7,	Z	16 (2)	72:2;73:23;74:7;76:7,
73:9;82:24;114:15;	24,25;8:2;13:3;17:10;		19:1;80:14	7,11;84:3;94:13;95:3,
140:4,5	56:2,7;59:1;90:17;	zeros (1)	16th (4)	22;97:8;99:12;
what's (14)	129:5;131:19	77:1	20:6;48:6;50:7;	101:20;105:3,12;
11:22;26:21;45:12;	witness's (1)	1	52:24	107:1,13,15;113:5;
47:17;63:23;74:23;	11:6		17 (1)	114:10;129:22;130:1,
81:23;87:11;89:5;	wonderful (1)		73:12	3,10,14,21;132:14,15;
138:1;143:10;154:10;	138:22	1 (14)	73:21	137:12;141:2,7;
157:8;160:12	word (13)	32:10;34:15;51:12;	18 (4)	143:2;144:19;145:1;
White (15)	63:15,17,23;64:3,5,	60:25;61:17;80:7;	33:16;36:5;73:11;	148:18;149:10;
124:10,17,20;	16,17;68:17,20;	101:15,18,19;110:24;	135:22	150:16;154:2;156:16;
125:8,25;126:3,4,13,	96:23;112:8;161:21;	111:9;143:16,24;	18th (1)	159:9;161:24
18,23;127:2,4,17,20;	162:10	154:9	3:4	21st (1)
128:4	worded (1)	1:03 (1)	19 (2)	50:22
whole (6)	30:22	92:21	22:5;48:1	22nd (2)
10:17;83:24;84:1;	wording (2)	1:25 (7)	19-30822 (1)	127:18,22
141:24;152:24,25	107:16;157:5	27:23;28:17;76:2;	3:8	23 (1)
wife (3)	words (2)	127:22;140:20,24;	1973 (1)	18:22
91:3,8;137:5	108:3;151:7	141:5	93:14	23rd (10)
willing (13)	work (3)	1:33 (1)	1996 (1)	25:6;49:16;61:11;
24:20;32:9;69:24;	9:21;33:11;84:13	132:21	18:18	62:19;73:24;105:23;
71:4;87:7;98:22;	worked (2)	1:34 (1)	19th (11)	109:4;110:13;132:17,
103:17;134:19;135:3,	36:20;137:13	25:12	21:1;48:15;53:6;	21
9,12,16;140:4	working (3)	10:46 (3)	94:9;125:14,22;	24 (3)
wipe (2)	98:24;143:14;	23:22;25:7;105:23	126:6,14,16;155:8,18	26:22;80:7;111:11
146:20,23	154:10	11:02 (1)		
wiped (1)	works (2)	58:5		

TAGNETICS, INC.

October 18, 2019

24th (12) 20:11;25:25;26:17; 49:16;86:10;106:7; 133:25;139:2,13; 140:8,11,13 25th (15) 20:11;27:14;28:17; 33:19;61:12;65:5; 76:1,5,12;86:15; 140:16,20,24;141:4; 143:9 26 (27) 14:3,22,24;16:13; 21:17;35:20;42:5; 48:21;49:1;63:13; 68:22;89:4;110:23; 111:3;113:13;119:11; 25;122:7,11,16;125:8; 15;126:5;143:25; 150:17;157:8,9 26th (44) 20:11,11;37:4;41:2, 5;42:2;53:11,13; 63:20;64:10;72:12, 17;73:13;76:13;84:6, 8;85:16;89:5;102:16; 103:19,23;106:14; 112:4,5;114:23,24; 115:3;117:21;119:16; 125:16,23;142:5; 143:15;144:19; 146:17;148:17; 153:21;154:5;155:10, 12;156:14;157:12; 160:2,3 27th (1) 73:16 2nd (1) 155:21 3 3 (24) 26:24;27:16,25; 28:18;66:11;80:10; 86:7;101:1;102:14; 103:2,3;104:3,7,12, 13;106:8;111:11; 132:1;138:25;152:2, 2;158:21,22,24 3:00 (2) 91:23;95:25 3:03 (1) 126:14 3:17 (1) 111:6 3:27 (12) 30:7;33:3;34:13,21; 64:12;111:3,7;112:6; 114:25;115:3,10; 143:15 3:30 (3) 95:25;96:17;97:13	3:56 (4) 34:6;48:21;113:13; 143:25 3:58 (3) 34:18;48:21;117:21 30 (1) 92:16 30,000 (2) 28:6;135:8 300 (1) 76:24 30th (17) 77:8;78:23;80:3; 83:4,12;150:14; 152:6,11,14,20,24; 153:22,25;154:9; 155:5,10;157:4 3rd (1) 154:3 4 4 (19) 39:6,7;48:25;80:10; 100:23;101:1;103:2, 5;104:4,7,12,13; 106:8;132:1;152:2,3; 158:21,22,24 4:09 (1) 35:14 4:14 (2) 21:2;155:18 4:35 (1) 102:17 4:36 (3) 35:20;76:16;102:17 4:42 (1) 14:24 4:54 (1) 22:17 40 (1) 94:20 4th (2) 155:21,22 5 5 (33) 23:20;25:18;39:6,8; 44:9,23;62:12;77:10; 79:9,16,20;80:4,11, 12;82:18;108:23; 109:4;121:5;151:21, 24;152:3,4;153:1,1; 154:1;155:8,17; 156:1,2;158:21,22,23, 24 5:13 (1) 50:21 5:18 (1) 127:18 5:20 (1) 92:7	5:30 (4) 96:4,20;113:25; 114:4 5:56 (2) 25:25;106:7 5:57 (1) 133:25 50 (1) 145:23 50.1 (1) 145:23 51 (1) 146:4 5th (1) 154:3 6 6 (6) 14:22;37:18;39:6,8; 61:3;82:2 7 7:25 (1) 50:22 7:43 (3) 26:23;86:10;111:11 7:48 (1) 48:2 8 8:24 (2) 28:22;30:7 9 9:23 (1) 53:8 9:33 (1) 78:23 9:34 (1) 3:1 9:50 (1) 12:13 9:58 (1) 12:13 90 (1) 28:2 90,000 (1) 28:1 90k (2) 28:25;29:6		
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